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The Government in its Relation to Industry

SPECIAL ANNUAL MEETING NUMBER

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By Honorable George Bruce Cortelyou, Secretary of Commerce and Labor, Washington, D. C.

SOME AGENCIES FOR THE EXTENSION OF OUR DOMESTIC AND FOREIGN TRADE

By Honorable George Bruce Cortelyou
Secretary of Commerce and Labor, Washington, D. C.

Mr. Chairman, Ladies, and Gentlemen:

I am particularly fortunate in having the privilege of meeting you this evening, for, in addition to the pleasure of seeing so many old friends, it is an interesting and gratifying experience for a speaker to address a gathering peculiarly concerned with the subject he has to discuss.

Your organization has had a rapid and healthful growth since its foundation in 1889. I am glad it is international in its scope and that its influence for good has been so marked. As announced when it was organized, the desire was to establish an association which, "renouncing all attempts at propaganda and demanding no confession of faith, should yet aim to keep its members in close touch with the practical social questions of the time." You are living up to this standard; you are doing something worth while in the life of the nation, and that should be a source of pride and congratulation to any association.

I greatly appreciate your kindness and consideration in arranging for me to meet not only the members of this Academy, but the members of the Manufacturers' Club, honored so long and so justly among the great organizations of its kind, and I am glad also to meet the representatives of the University of Pennsylvania, the foundation of which "was laid in colonial days, nearly fifty years before Pennsylvania became a State."

Philadelphia has many claims upon those of us who are trying to contribute to a better understanding of commercial and industrial conditions. As the metropolis of a manufacturing Commonwealth, as the seat of one of the great universities of the country and other institutions of learning having a deservedly high standing in their respective classes, as the home of influential organizations such as yours, and as the abiding place of many who represent the best ten-

dencies of our citizenship, it is peculiarly a city in which it is opportune to dwell at some length upon problems before the country and the steps believed to be necessary for their solution.

I have been in Philadelphia many times. I have had occasion, in connection with various Presidential trips, to note the tact and courtesy and hospitality with which your citizens arrange for such gatherings as this and for the services or exercises incident to your public meetings. You will pardon me for the personal allusion if I say that in a number of instances when visiting other places under such auspices I felt it necessary to take charge of the committees; whenever I came here your committees took charge of me I conclude, therefore, that to-night I am in your hands, and that while you may differ with some of my statements and conclusions, you will bear with me patiently, and will receive in the generous spirit so characteristic of your people such suggestions as may seem warranted regarding the topic upon which I shall speak.

Many of you recall the visit of President McKinley to attend the opening of the Philadelphia Commercial Museum. He believed in such agencies for the promotion of our commerce. Some day the new Department of Commerce and Labor may find it advisable to have closer relations with these museums, and I should be glad to see some practical steps taken to that end. Doctor Wilson, the able head of the Museum, and those associated with its development, deserve the thanks of this community and the recognition I am sure they will receive from the business men of the country for what they have contributed to the fund of our information upon commercial topics.

There has never been a time in the history of this country when so much interest was taken in commercial and industrial conditions as at present. With the expansion of our territory has come the expansion of our trade. We believe that the necessary expansion of territory has been attended by no sacrifice of the principles upon which the Government was founded and with no menace to our future welfare. The same must be made true of the expansion of our trade. The founders of the Republic builded wisely, and however great may be the development on commercial and industrial lines, there should be no deviation from the great fundamental principles, adherence to which has been the safeguard of our institutions. Some time ago,

upon an occasion similar to this, I referred to what is termed the "commercialism" of the age in which we live. Let me recall what I then said:

"In these prosperous times we hear much of the term 'commercialism.' It is frequently referred to as though in itself it represented a misguided national spirit or a tendency of our people to lower their standards. There is, undoubtedly, a commercialism that would dwarf the national life; that would place business success above business honor; that would contemplate the profits of trade without the ethics of trade; and that, if followed to a large extent, would make the American name a shame and a reproach among the nations. But there is another commercialism that is founded upon the traditions of the fathers; that seeks to secure the markets of the world by the American traits of thrift and fair dealing; that weaves into every fabric, as a prime essential, a moral fibre; that combines the fine qualities which have made the names of our really great merchant princes and leaders in the business world synonyms of honor and integrity. That is the commercialism with which you and I wish to ally ourselves, for the nation that is devoid of that spirit to-day sits supinely while her competitors pass on to the goal of commercial and industrial supremacy. Let us dedicate ourselves, not to the warped and sordid and altogether false commercialism that would gain success at all hazards, but rather to the true commercialism that is worthy of our best American ideals.

"It is so easy to start a word or a phrase on its rounds, that is later to be taken up, written about, and preached about; and it seems to me this is as good a time as any to place ourselves on record on the right side of this proposition and have the eminent gentlemen who are such ready critics and prolific controversialists understand that there can be a commercial spirit in a great nation so fine and so true that it becomes a support for the best tendencies and best possibilities of the national character; and that we do not intend that this spirit shall be misrepresented by any sweeping generalization or by a failure to recognize the fact that among the greatest of the forces that have made this Republic what it is to-day are the men of commerce and industry."

My remarks this evening contemplate this true commercial spirit as an essential basis for a consideration of agencies for the ex-

tension of our domestic and foreign trade. Upon that foundation, what are some of these agencies?

First, there must be the initiative and energy of the individual merchant, and cooperating with the individual merchant must be his employee, for the initiative and the energy of the one must be supplemented by the faithful service and devotion of the other. Granting this, we find ourselves at the very outset confronted with the great question of the relations of what are called capital and labor. Elsewhere I have discussed this question at some length. I shall not delay you with any remarks upon it further than to say that the relations maintained between the employers and employees in our business life have an intimate bearing upon the whole subject of the extension of our influence on commercial lines. Labor and capital must work together, must reason together, must be tolerant and open-minded if they are to achieve the goal of their mutual desires. Men naturally differ among themselves in their opinions on this subject, but very often their differences are found to show but slight divergence from a common ground. The man who seeks to accentuate these differences for political or personal advantage will ultimately receive the condemnation his mischievous teachings deserve. The demagogue is always with us. For some months in the immediate future we may expect to hear much from him. Whether in the ranks of capital or labor, whether in one political party or another, he is an impediment to progress and a menace to free institutions. In spite of him and in the interest of good government, the problems that are essentially nonpartisan must be sacredly kept so. Not that we should minimize the dangers along our pathway, not that we should abridge the freedom of speech or of the press in the discussion of wrongs that must be righted or of evils that must be eradicated, but running through the whole discussion must be a spirit of fair play and common decency. It is not necessary that one should be a pessimist to recognize the evil tendencies and forbidding influences that menace the national welfare. We are not naturally a nation of pessimists. The founders of the nation breathed the very spirit of optimism, and, while recognizing that this Government, like all human devices, had its imperfections, and that dangers and difficulties were inseparable from the working out of its destiny, the great leaders of American thought and action from the days of Washington to the

present moment have carried aloft the banner of a national hopefulness and have been sustained and strengthened by a firmly rooted belief in the integrity and greatness and glory of this mighty Republic.

Among the problems confronting our people to-day, none is more worthy of serious attention than that relating to commercial and industrial conditions. I believe that we are making progress. I believe that there is to come better feeling between employer and employee. I believe that the organizations and individuals representing the men and women of wealth, and the men and women whose toil makes the accumulation of wealth possible, are exercising an ever-increasing influence for better feeling; and your association and others of kindred purposes, chambers of commerce, boards of trade, and commercial organizations generally—great unofficial agencies for the extension of American commerce—are doing much vital work in that direction.

To repeat: first, individual initiative, energy, and loyalty upon the part of the citizen whether employer or employee; then, in cooperation with them, the agencies of government, and, at this time, most appropriately, the new executive establishment which has been created to have some jurisdiction over commercial and industrial affairs.

Turning to the Federal agencies, we find that nearly every branch of the Government does important work for commerce and industry. The Department of State in negotiating treaties promotes the development of commerce, while the work of the consular service, the results of which are now given to the public daily, by the Department of Commerce and Labor, is almost exclusively devoted to commercial interests. The Army of the United States, for which many millions are annually appropriated, although intended primarily as an instrument of war, is, in fact, an important agency for the upbuilding of commerce, since it is under the jurisdiction of the War Department that the vast appropriations for the improvement of rivers and harbors are expended. The Navy is also an important factor, not only by way of protection to our merchant marine, but also in its work of exploration, in the laying out of cable routes, and in many other ways. The Post-Office Department, with its expenditure of over one hundred million dollars per annum, is an invaluable agency for commercial development. The Department of the Interior is an-

other, through the aid which it gives our citizens to establish homes and to become producers of agricultural and mineral wealth; and particularly in the encouragement which, through the administration of the patent laws, it gives to the inventive genius of the country. The Department of Agriculture, for which nearly forty million dollars have been appropriated during the past decade, is engaged in promoting and fostering our principal source of wealth, agriculture, whose products form such a large part of the materials entering into our commerce, both internal and external. Of our total exports, which now exceed those of any other country of the world, agriculture supplies nearly, or quite, two-thirds. The Department of Justice, in enforcing the various laws against the restraint of trade, and the Treasury Department, in administering the finances of the country, are also potent factors in our commercial progress and development; and in conjunction with these Departments the Department of Commerce and Labor will contribute its share to the maintenance of our commercial and industrial preeminence.

It is especially with reference to the work of the new Department that you naturally expect me to speak in detail.

Congress has declared it to be the province and duty of the Department of Commerce and Labor to "foster, promote, and develop the foreign and domestic commerce, the mining, manufacturing, shipping, and fishery industries, the labor interests, and the transportation facilities of the United States."

One of the most important methods of aiding commerce is to give to those engaged in it such definite information regarding existing conditions as will enable them intelligently to determine the classes of articles which can be most profitably produced, the sections to which they should be distributed, and the agencies through which they can best be placed before prospective customers. In all of this work the new Department is actively engaged.

The Census Bureau, which in the year 1900 gathered the statistics of population, manufactures, and agriculture, is now engaged in collecting and compiling information on other subjects having important relation to our industries, and is also preparing to take, a year hence, another census of our manufactures, thus giving a quinquennial instead of decennial statement, which in the past has been our sole information on the subject of manufactures. In addition,

its statistics on cotton production are now presented at frequent intervals, and in conjunction with special investigations ordered by Congress, it is giving to the country a fuller knowledge of the great factors of our commerce than ever before.

The Bureau of Statistics of the Department publishes, for the benefit of our commercial interests, such information as it is able to collect with the cooperation of the various governmental offices and commercial organizations. It also gathers and publishes from month to month statements of the concentration of the principal articles at certain internal points and their transportation therefrom to various parts of the country and to the seaboard for exportation. This work, a comparatively new one, is carried on by the Bureau largely through the cooperation of commercial bodies, the press, and the large organizations engaged in transportation. In like manner information is collected and distributed regarding exports and imports. Material for use in manufacture is forming a steadily growing share in our imports, while the home market for articles in a form ready for consumption is more fully supplied year by year by our own producers and manufacturers. Manufacturers' materials in 1860 formed 26 per cent. of our total imports; in 1880, 37 per cent.; in 1900, 46 per cent., and in 1903, 48 per cent., while the imports of articles manufactured in a state ready for consumption have decreased in about the same proportion.

Monthly statements of the total exports of the various articles of production and of the countries to which exported are presented by the Bureau of Statistics and distributed to individuals and to commercial and industrial organizations. In addition, statements are issued at the close of each fiscal year showing the distribution by countries of every article exported and the quantity and value sent to each country during each year of the previous decade. Semiweekly statements of commercial conditions are prepared and distributed to the press and to commercial organizations, thus giving the widest possible publicity to the latest available information regarding commercial conditions.

Still another important undertaking of the Department is the publication and distribution of commercial information collected by the consular service of the United States—a service composed of more than 300 men scattered throughout the world—who report

regularly upon the opportunities for American commerce in their respective districts. These reports are forwarded by the consuls through the State Department to the Department of Commerce and Labor for publication and distribution. In addition to the information thus obtained, the Department of Commerce and Labor from time to time calls upon the consuls for special information for which inquiry has been received from merchants and manufacturers. The consular reports are issued daily in printed form, and distributed to the press, to commercial bodies, and to a limited number of individuals. It is through this service that the American commercial public is kept in close and constant touch with trade conditions and opportunities throughout the world.

Another valuable agency is the Bureau of Labor of the Department. Its investigations are not confined to conditions in the United States, but are extended to other countries and to the relations which labor conditions there bear to production and commerce and labor in the United States. The information thus obtained is published periodically and widely distributed.

Other branches of the Department's work in the interest of commerce and industry include the Light-House Establishment with its thousands of employees engaged in maintaining aids and safeguards to commerce on the coasts and inland waterways; the Coast and Geodetic Survey with its corps of skilled men engaged in surveys of our coast; the Steamboat-Inspection Service, which contributes largely to the safety of persons and capital engaged in commerce by water, both along the coast and upon the interior waterways of the country; the Bureau of Navigation, which has to do with matters relating to the shipping interests of the United States; the Bureau of Fisheries, which in promoting the development of our fresh and salt water fisheries contributes largely to the food supplies entering into the commerce of the country; the Bureau of Immigration, which protects the country against violations of the laws governing immigration; and the Bureau of Standards, which is intrusted with the care and use of the national standards of measure, with the development of methods of measurement, and with the dissemination of knowledge concerning these subjects as applied in the arts, sciences and industries.

Of the new Bureaus created by the act establishing the Depart-

ment of Commerce and Labor, the Bureau of Corporations is engaged in the necessary foundation work for its duties under the law, and will eventually become a valuable agency for the extension of our domestic and foreign commerce. The Bureau of Manufactures is not yet organized, owing to lack of appropriations. Funds available in present legislation will make possible an early beginning of the work of this Bureau.

Provision was made in the estimates for this year for an appropriation to be expended under the immediate direction of the Secretary for special investigations of trade conditions at home and abroad, with the object of promoting the domestic and foreign commerce of the United States, and for other purposes. Important instruments in the promotion of trade are the agents dispatched from time to time by foreign governments to study commercial opportunities in other countries. Military and naval experts are sent abroad by our Government to report on conditions that are of interest to their respective Departments. In the daily competition of international trade there is even greater need of intelligent outposts abroad. Special agents are also required in the Department itself to inspect the branches of its services in different localities and to secure uniform, businesslike and economical methods. The need of such agents in other Departments has been met by appropriations, and there is of course a similar need in this new Department.

No appropriation has yet been made for this service, but I am convinced that when its importance is made more apparent to Congress favorable action will be taken.

In addition to the measures that have been taken for the reorganization and improvement of existing branches of the statistical service, it is proposed to establish an office for the collection and distribution of foreign-tariff information, this being one of the directions in which the Department's work can apparently be extended with great advantage. A small initial appropriation has been received for this purpose.

Nations are inclined to regulate their commercial intercourse by means of a double system of tariffs, permitting preferences through commercial treaties. The current agitation in Great Britain for a departure from traditional policy in order to increase commerce be-

tween the members of the British Empire may have marked effects upon American trade and incidentally upon American labor.

The industrial and economic facts which accompany such movements must be closely, intelligently and unremittingly watched. A few competent employees, acting directly under the head of the Department, will suffice for this purpose. From the small expenditure proposed excellent results may be obtained. There is at present no Government office in the United States engaged systematically in the work of collecting information regarding foreign tariffs, and making that information available to our exporters. This Department has received frequent inquiries for such information, and has been impressed with the importance of providing a medium to supply it.

You have been kept advised from time to time of what the new Department is doing on these lines. Too much must not be expected in the initial months of its existence. It will cooperate with you and you must cooperate with it. There must be mutual understanding and mutual support. It will not attempt the impossible. Its sphere lies in what will be well-defined limits. It is a branch of the Federal Government, and as such must adhere strictly to the lines marked out for its jurisdiction and not inject itself into fields of private endeavor where it does not belong. It can do a great work for the commerce and industry of this country, but the results it will achieve will be measured by the foresight and the intelligence and the conservatism with which it carries on its work as one of the great agencies in the extension of our domestic and foreign trade.

The promise held out for the new Department presupposes proper equipment. As it demonstrates its usefulness, I am confident Congress will increase its appropriations to a point adequate to its needs. Like all new institutions it is bound to have its early struggles for recognition. Congress and the Chief Executive have given it work to do. Whether well or ill equipped, it will do this work in the best manner possible. It seeks nothing it should not have. It will ask for support only on its merits, but as it demonstrates its usefulness in the scheme of our Government, it will have whatever recognition and commendation it may be entitled to receive.

The new Department has to deal in a large way with great business enterprises. It has approached these problems with con-

servatism and impartiality. It has some jurisdiction over the interests represented by the toilers of the country, and it will do its share in securing a recognition of labor's rights and the encouragement of better feeling and fairer dealing. It is made the statistical Department of the Government, and it will make its statistics nonpartisan, impartial, and as accurate as they can be made. It has to do with marine interests. It will advance those interests in every proper manner, and I am sure it is not heresy to state in this presence that it will lend the weight of its influence to the building up of the American merchant marine. It has supervision over the difficult problems of immigration and Chinese exclusion. There are inconsistencies in the laws relating to them. There are grave hardships constantly coming up in the execution of these laws. Not infrequently they present obstacles to the development of our commerce. But they are founded on the good old doctrine of self-preservation, and must be fairly enforced until more satisfactory legislation can be devised. These and the other problems to the solution of which the Department must give its best energies are among the most important confronting our people to-day. If the Department can do its legitimate share in their solution, if its personnel can be raised to a high standard, if its expenditures can be kept at the lowest figure consistent with good administration, if, in a word, it can be conducted as a business establishment for the advancement of business interests and for the encouragement of good feeling and better understanding between all interests having to do with our trade and industrial relations—the employer and the employee, the accumulator of wealth, and the toiler in the counting room or the shop or the factory who contributes to it—if it can be a potent force for enlightenment and progress in these busy years of the nation's development, all who have an interest in its success will feel that their confidence has not been misplaced and that they have contributed to the establishment and advancement of a factor in our national life.

In some remarks made to officials of the Department on the 1st of July, 1903, I said: "The new Department moves forward, and as it takes its place by the side of the other great executive establishments it will catch the step and the swing of their onward movement in the nation's progress and prosperity."

I am sure you will welcome the statement, which it is almost

unnecessary to make, that in all the work of the new Department, in its desire for nonpartisan and impartial and conservative action, in its contribution to the solution of the problems with which it has to deal, it has had no more sturdy friend, no more vigorous advocate, no more faithful supporter, than the strong and able and fearless man who is to-day President of the United States.

This country has taken its place in the front rank of the world's producers. It now excels any other country in the production of wheat, corn, iron and steel, coal and copper, and possesses more manufacturing establishments and a larger number of intelligent, well-paid workmen than can anywhere else be found. Our locomotives, railway cars, carriages, agricultural implements, boots and shoes, clocks, scientific instruments, telephone and telegraph instruments, and a multitude of other products which go to every quarter of the globe are a tribute to American skill and enterprise.

What I have referred to this evening are, in the main, the forces to which we may look for still further progress and development in our commercial and industrial relations, but back of them all there must be triumphant Americanism, forceful and far-seeing, ever aggressive and ever mindful of the principles upon which our national progress depends. On the integrity, and energy, and public spirit of American citizenship we may confidently rely for the future glory and prosperity of our country.

Such organizations as yours are among the most influential factors in our commercial and industrial development. I congratulate you upon what you have done; I bid you Godspeed in the good work you are yet to do.

II. The Government Regulation of Banks and Trust Companies

Government Control of Banks and Trust Companies

By Honorable William Barret Ridgely, Comptroller of the Currency, Washington, D. C.

GOVERNMENT CONTROL OF BANKS AND TRUST COMPANIES

By Honorable William Barret Ridgely
Comptroller of the Currency, Washington, D. C.

The passage of the National Bank Act, or National Currency Act as it was first called, may be considered the beginning of the federal control of banks. This has now been exercised for more than forty years with most satisfactory results, both to the government, the banks and the people who have done business with them. It has resulted in an excellent system of banks, honestly, ably and well managed. The figures in regard to the number of failures and loss to depositors which are given elsewhere in the article show an unequalled record of soundness and safety, and, contrasted with the previous records of State banks and even with the better and stronger State banks and trust companies which have existed alongside of the national banks, make a strong argument in favor of national control of institutions of this character. The total loss in over forty years is less than eight one-hundredths of one per cent. of the average amount on deposit. The volume of experience gained during the forty years' control of the national banks is probably the greatest accumulation of such experience which has ever been made, based, as it is, upon the control of a greater number of banks, more widely distributed, doing a larger volume and variety of business and covering a longer period than has ever been exercised in any other country. As a matter of fact, other countries do not attempt such a complete control or examination of banks as we do in the United States. The nearest approach to our national system is in some of our State bank departments. State banks, and especially the mutual savings banks in several States, are quite closely controlled in their management by specific statutes and are frequently and thoroughly examined. But there is no other system of banks over which there has been for any such period such a thorough control through restrictive statutes, frequent examinations and reports, as has been exerted over the national banks of the United States.

Probably the main consideration in the passage of the currency act establishing the system of national banks was to provide a market for the national loans made necessary by the war. The country, however, was glad of a chance to exchange the system of State banks under different laws in each commonwealth for a national system, which would at least be uniform, and which, above all, would substitute a system of national bank note currency for the many issues of State bank notes. As is well known, it was then expected that this bank note currency would replace all other forms of paper currency in circulation. It was probably on this account that the official who was to have charge of the relations of the federal government and the banks, was called Comptroller of the Currency, instead of the Comptroller or Superintendent of National Banks, which, as events have shown, would be a more distinctive title. The issue of legal tender, United States notes and other forms in circulation, and later the addition of a large volume of silver certificates to our paper circulation, have made such a change in the situation that, instead of furnishing all the paper currency, the national bank notes have formed but a comparatively small part of it.

It was mainly the granting of the privilege of note circulation which first attracted banks to the national system and made any national control of banks possible. The national banks were intended and expected to be primarily banks of issue, and were indirectly given a monopoly of this privilege by a prohibitive tax levied on the issues of all other banks. Outside of their note issues, the powers of the national banks were quite severely restricted. They were expected to be banks of deposit and discount and to transact, as far as possible, the local commercial business of their community. They were denied the power to have branches, to make loans on real estate or to own real estate other than their necessary banking houses, to loan more than ten per cent. of their capital to any one person, firm or corporation, to own or deal in shares of stock, to own or make loans on their own shares of stock as security. Each bank was originally required to keep a minimum reserve against deposits and notes issued, but this was later amended to require a reserve on deposits only.

When the act was first passed, there was much question whether the inducements offered the banks were sufficient to induce them to

submit to examination, restriction and control by the United States. Many of the early banks were organized, or converted from State to national as much or more from patriotic motives as from hopes of increased profits. The fact is, the circulation has never been very profitable; never sufficiently so to induce the banks to approach the maximum amount permissible. The highest percentage of possible circulation was issued in 1882 and was 81.6 per cent. This gradually declined to 27.54 per cent. in 1892 and has since then steadily increased to 54.75 per cent. in 1903. A strong inducement to the banks in the larger cities to secure national charters is the system of reserve and central reserve banks, which permits a national bank in other cities to keep two-thirds of its cash reserve on deposit with an approved reserve agent national bank in a reserve or central reserve city; and a bank in a reserve city to keep one-half its reserve in the central reserve cities St. Louis, Chicago and New York. This gives national banks in reserve cities an opportunity to secure large deposits from country banks which the State banks cannot secure, because deposits with State banks are not counted as reserve, and are also subject to the ten per cent. limit on indebtedness by any one firm or corporation. An additional inducement for banks to submit to federal control is the greater confidence in which the banks under national supervision and control are held by the people. This has steadily increased since the creation of the system as the result of the examinations and published reports, and that this is justified is shown by the comparative statement of the failures of national and State banks. From the date of the organization of the national system to January 22, 1904, there were organized 7083 national banks. Of this number 404 became insolvent and 1499 have gone into voluntary liquidation, leaving 5180 in operation. The percentage of failed banks to the total organizations is 5.7 per cent.; the percentage of liquidating banks is 21.2.; the percentage of active banks is 73.1.

From an estimate based on 330 insolvent national banks whose affairs have been finally closed, dividends amounting to 71.31 per cent. have been paid on claims proved amounting to $101,724,840. Including in this estimate, however, offsets allowed, loans paid, etc., the creditors received on an average 78.55 per cent. on their claims. This would make a loss of 21.45 per cent. to the creditors. The total

loss to depositors in forty-one years on deposits, now amounting to almost three and one-half billion dollars, has been less than thirty million dollars. The cost of liquidation, based on the total amount collected from assets and from assessment on shareholders was $8,579,822, or 8.3 per cent. The causes of failure have been classified as follows:

Excessive loans	22.81%
Fraudulent management and defalcation	36.34%
Injudicious banking	25.06%
General stringency and panic	15.79%

Comparing the result of failures and liquidations among the national banks with the figures in regard to the failures of State banks from 1863 to 1896, as given in the report of the Comptroller of the Currency for 1896, the last date to which complete figures are available, it will be seen that while only 6.5 per cent. of the number of national banks in existence failed during this time, 17.6 per cent. of the other banks in existence failed. And while the national banks which had failed up to 1896 paid to their creditors 75 per cent. in dividends, the State and other banks paid only about 45 per cent. The cost of liquidation of State and other banks which failed is also very much higher than the cost of liquidation of national banks.

The present law authorizes the Comptroller to order an examination of a bank at any time he may see fit. For several years after the establishment of the system but one examination was made each year. After a short time the banks in the reserve cities were examined twice in each year. During the administration of Mr. Eckels after the panic of 1893, this system was extended until each bank is now examined regularly twice each year. The reports made by the examiners have grown from a short statement of liabilities and resources until they now cover all vital points of interest in regard to the condition and solvency of the bank examined. These reports when received in Washington, are gone over very carefully by a corps of trained men, and letters are written to the banks, calling attention to and criticising the various items in the reports and asking for an explanation or additional information in regard to them. This is probably the most important work of the Bureau, especially in cases where a bank is in a critical condition. Probably the greatest utility which is done by the Currency Bureau is to be seen in those cases where it is

discovered, through the reports, that a bank has made such losses as to involve an impairment of capital or possible insolvency. In more cases than are generally known the Comptroller of the Currency, with the aid of the bank examiner, is able to save a bank which, without intervention and assistance, would have failed. Of course it is essential to success in this matter that secrecy be observed, and it rarely becomes known to anyone outside of the bank and the Comptroller's office what has been the condition of a bank or what steps are necessary to save it. It is the experience of the office that, where the officers of the bank are honest, truthful and make complete statements of their difficulties, in most cases additional security can be obtained for doubtful paper, or such a contribution made by the directors or other stockholders that the impairment of capital or insolvency can be entirely removed, and there are many banks in the United States to-day which have been saved in this way and are now not only thoroughly solvent, but highly prosperous institutions. This system of examinations, of course, is far from perfect. The examiner cannot, in the time at his disposal, make such an inspection as will always result in the detection of fraud and violations of law. If the officers of a bank, or any of them, are dishonest, being in the bank every day, they have every advantage over an examiner, and are very frequently able to deceive him. No system of examination can supply ability or ensure honesty in bank management. This must be supplied by the officers and directors, and upon them the responsibility must rest. In any well managed bank the work of the examiner ought to be supplemented and aided by continued and thorough examinations by the directors themselves, or someone appointed by them independently of the men who regularly have charge of the funds and accounts. In addition to the two examinations in each year, each national bank is compelled by law to make to the Comptroller at least five sworn reports of its condition. These were first made on fixed dates, but it was found that as these dates were known the banks would always prepare to make their statement; and the present method is for the Comptroller to call for a statement of condition as of some previous date, and these are always made without any notice to the bank on dates which are not fixed by the Comptroller until the moment the call is made. A summary of the statement of condition of all banks of the country, divided by States,

which is published within two or three weeks after the issuance of a call, gives very prompt and valuable information as to the condition of the banks in all parts of the United States.

It is worthy of notice that, while the national banking system has been steadily growing until there are now about 5200 banks, with the great resources already referred to, the tendency to increase, both in number of banks, capital and deposits is greater among the banks other than national than among the national banks. The following is a table from the report of the Comptroller of the Currency for the year 1903:

BANKS.	Number	CAPITAL.		DEPOSITS.	
		Amount.	Per cent.	Amount.	Per cent.
1882.					
National	2,239	$477,200,000	67.01	$1,131,700,000	39.7
State, etc	5,063	234,900,000	32.99	1,718,700,000	60.3
Total	7,302	712,100,000	100.00	2,850,400,000	100.00
1892.					
National	3,759	684,678,203	63.9	1,767,519,745	37.8
State, etc	5,579	386,394,845	36.1	2,911,594,571	62.2
Total	9,338	1,071,073,048	100.00	4,679,114,316	100.00
1902.					
National	4,535	701,990,554	52.4	3,222,841,898	33.2
State, etc	7,889	499,621,208	47.6	6,005,847,214	66.8
Reporting for tax only	3,732	138,548,654		478,592,792	
Total	16,156	1,340,160,416	100.00	9,707,281,904	100.00
1903.					
National	4,939	743,506,048	50.43	3,348,095,992	32.81
State, etc	8,745	578,418,944	49.57	6,352,700,055	67.19
Nonreporting	4,546	152,403,520		502,522,431	
Total	18,230	1,474,328,512	100.00	10,203,318,478	100.00

The national banks, which had 67 per cent. of the capital in 1882, had 63.9 per cent. in 1892, 52.4 per cent. in 1902 and 50.43 per cent. in 1903. The national bank deposits, which were 39.7 per cent. of the whole in 1882, were 37.8 per cent. in 1892, 32.2 per cent. in 1902 and 32.8 in 1903. Some of this apparent decrease may be possibly due to more complete returns from the banks other than national which are now obtained, but there is no doubt of the fact that the tendency is for the banks other than national to increase more rapidly. This is true in spite of the fact that the law of March 14, 1900, authorizing the organization of national banks with a capital as low as

$25,000, has resulted in the conversion of a large number of State banks in the country towns into national banks, and the organization of a great many national banks to succeed private ones. Probably the principal reason for this tendency is the great increase in the number of trust companies which have been organized during the last ten years. These companies, organized under State laws originally designed to provide for companies doing a strictly trust business are taking advantage of the liberal character of those laws, and a very large portion of the new organizations are merely commercial banks, having trust company privileges perhaps, but in reality doing comparatively little strictly trust company business. The laws of the different States, particularly in regard to the cash reserves to be held, and loaning money on real estate security, are so liberal that organizations of this character have a great advantage over the national banks in the inducements which they can offer their customers. It is naturally to be supposed that any one contemplating the organization of a new bank, other things being equal, will be inclined to do so under the laws which allow the greatest freedom from governmental interference, restriction and control. The question as to what shall be done in the way of control of these new trust companies is very important. It would be a great mistake for the different States to allow the national banking system to be broken down or seriously weakened by new organizations which are able to do so because they are less carefully examined and controlled than the national banks. The national system has furnished most excellent banks for the regular commercial banking business. It is not likely to be an improvement to have this replaced by any system of State banks. Much less is this likely to be the case if the inducement to go into the State systems is greater freedom from control, weaker reserves and less careful management. The modern trust company has been called the highest example of modern commercial organization, and of many of the largest and best companies this is doubtless true. The regular trust company business is a very important part of any financial system, and calls for the highest degree of character, honor and ability.

I quote from a recent writer on this subject, and agree with all that he has said in regard to the trust companies:

"Trust companies are formed for the execution of the most

sacred duties that can be imposed by man. The care of the property and welfare of the helpless and the dependent, the widow and the orphan, the feeble and ignorant ones, who are such an easy prey for the unscrupulous, is part of their mission; to carry out the wishes of the dead, who put faith in the company and entrusted their dearest interests to it for years in the belief that it always would be true and honest; to meet the expectations of the living, who entrust their property to it in full confidence that it always will be faithful and capable; this demands a conscientiousness and thoroughness, which must always serve as a high ideal and inspiring stimulus to right-minded men."

When, however, the trust companies cease to do this character of business or attempt to add to it not only ordinary commercial banking, but in many cases underwriting and promotion of all sorts of new enterprises, the case becomes entirely different. It can hardly be said to be a reasonable or proper regulation of the banking and trust company business to allow the organization, under the same law, of concerns which not only have the power to act as trustees in all of the important capacities which the writer has enumerated, but which also have the power, if the management is so inclined, to do a general commercial banking business with little or no cash reserve, and even to underwrite an issue of bonds and securities several times in value the combined capital, surplus and deposits of the so-called trust company, as happened in a recent notable case. In another instance trust companies organized under the laws of certain Eastern States engaged in the organization of national and other banks in the Western States and attempted to pay up the capital with certificates of deposit in the so-called trust company. It is true most of the older trust companies have been splendidly managed in every respect, their officers and directors are men of the highest character who can safely be trusted with any business, whether it is in the nature of a trust, commercial banking, promotion, or underwriting. It is not such concerns as this which need control and regulation. Their business will be well and properly done in any event, and probably will come well within the terms of any law intended to control this class of business. Such concerns as this have nothing to fear from regulation, nor should they oppose the attempts to place reasonable safeguards upon the business for the protection, not only of their

depositors and creditors, but of the entire country. If there is any reason why a national bank should maintain reserves against commercial deposits, the same reason will apply to commercial accounts in any other bank, whether called a trust company or not. A trust company with a large business in its trust department, if it also has a banking or savings department, owes it to its customers and to the public to see that the banking department is not so conducted as to endanger its trusts in the slightest degree. The very existence of those trust obligations should make its banking department ultra-conservative and careful, as so many of them are. The trust company, whose chief business is in its banking and savings department and is carefully and conservatively managed, is more interested than anyone else to prevent reckless and incompetent, or dishonest, men from securing similar charters which will permit them to run competing banks, without proper reserves or other safeguards prescribed by experience. Frederick D. Kilburn, Superintendent of the New York State Banking Department, says in regard to reserves in Trust Companies for March, 1904:

"After mature consideration of the subject and a study of the existing conditions, I am of the opinion that the whole matter should be regulated by statute. Before this is attempted, however, the banks and the trust companies should agree upon the provisions of any proposed legislation in this direction. All feelings of spite and selfishness, if any exist, should be forgotten. The interests of any particular institution, except as it may be in harmony with the interests of all, should not be considered. The law should be general in terms, and, if any class of deposits are exempted from its operation, sound reasons should be given for the exemption.

"I am well aware that many trust company officials, and some bank officials, will not agree with my view. Some think, and perhaps not without reason, that they are able safely and conservatively to conduct the affairs of their institutions without interference of this or any other kind; but others will sometime take their places, and then perhaps a less experienced and less conservative management will be in control. The whole matter should be adjusted with exclusive regard for the needs of the situation, and with the sole purpose of conserving the interests of all concerned. In the meantime, it should be remembered that trust companies and banks alike are

in the main founded upon the same general principles and are dependent to the same degree upon public confidence for success."

In his annual report for 1904, Mr. Kilburn also says:

"The right of domestic trust companies to hold stocks in private corporations might wisely be definitely defined, their right to engage in underwriting schemes unqualifiedly denied, and the obligation imposed upon them to carry a legal reserve. As a part of this latter proposition, I am confident that it would be advisable to require also that these institutions and the State banks in New York make weekly reports similar in scope to those submitted by the Clearing House banks and the non-member banks to the Clearing House Association."

Whatever regulation or control there is to be of the trust companies must come, for the present at least, from the State governments. Federal control of the national banks has been so satisfactory and successful that there is some desire expressed for federal control of other banks and trust companies. There has not been, however, so far as I know, any practical suggestion made by which these institutions can be forced or persuaded to submit to Federal control, especially if it is to be more severe than that now exercised by the States. Federal control, therefore, does not seem to me to be a present practical question.

Do not misunderstand this as in any degree an attack on the trust companies or as unjust criticism of them by a partisan of national banks. The trust companies can have no better friend than I am. I believe in them thoroughly; I recognize the great value of their past services and their possibilities for good in the development of our country in the future. There is abundant field and scope for both the national banks and trust companies, but they should work in harmony, aiding and supplementing each other. I speak in the interests of both, and in advocating more careful control and conservative management, I do so in the interest of the many splendid banks of both kinds whose able, honest, conservative management, with or without restrictive laws, is entitled to the protection which only such laws can give them against not only the competition but the danger to their institutions and the whole country which may come from institutions whose management is in less honest and less able hands.

Control and Supervision of Trust Companies

By Honorable Frederick D. Kilburn, State Superintendent of Banks of New York

CONTROL AND SUPERVISION OF TRUST COMPANIES

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In discussing the general question of the control and supervision of the trust companies in the country by the respective States in which they are located, I take it for granted that there can be no serious division of opinion. It is the general impression and desire among thinking men, who have given the subject consideration, that adequate and thorough control of institutions of this kind by the State is essential alike to their own legitimate success, and to the safety of the public. And especially is this true in view of the great development of our country's resources, the vast extension of its influence, the undreamed of expansion of its domain and the wonderful growth and combination of business enterprises all over the country which the last ten years of our history have witnessed. Not until recent years has there been a State supervision of these institutions in any comprehensive sense, or by general laws regulating their formation and control.

Trust companies are private corporations created by the State. They are privileged to take charge of private estates, and to act as executor, administrator and guardian—relations which imply the most sacred trusts. Their powers and privileges in other directions are varied and extraordinary, and altogether their character and purposes are of such a nature that there should be the closest and most efficient State control and supervision over them that can be devised, to the end that, so far as human foresight can prevent, there shall be no betrayal of the interests committed to their care, nor failure by them to meet promptly and faithfully their engagements. But this judgment is not intended to imply that an administrative bureau should undertake a regular examination of each specific trust, nor do I believe that experience has shown this to be necessary. If it be made certain that the affairs of a corporation of this class are being managed in general with prudence and wise judgment, that its investments are of a character carrying the

guaranty of a reasonable income return and of safety—in a word, if general examinations show a company solvent, strong and prosperous, and conducted in accordance with the law—the question of the proper discharge of each specific trust can be left without risk to the company and to the determination of the Courts at the final accounting, when, if any default or wrong be shown, the company being responsible and abundantly able to pay, correction or reparation may easily be enforced.

All trust companies organized in the State of New York prior to 1887 were formed under special charters granted by the Legislature. The first such charter granted was to the Farmers' Fire Insurance and Loan Company, now the Farmers' Loan and Trust Company of New York City, one of the largest and most conservative companies in my State. It was chartered in 1822, and was given the power to make loans upon the security of bonds and mortgages, or upon conveyance of improved farms, houses, manufactories, or other buildings, or on any other real estate, or on the security of corporate stocks. It was also empowered to carry on the business of fire and life insurance. It was prohibited, however, from taking deposits, or from discounting promissory notes, bonds, due bills, drafts or bills of exchange; nor was it allowed any banking privileges or business whatever. The same year the charter was amended to confer upon the company the power to act as trustee.

Other charters were granted from time to time, all containing special privileges to a greater or less extent, such as insurance, title guarantee and mortgage features.

Many of the savings banks' charters, which until recent years were also the creatures of special legislation, carried trust company powers. Some trust companies were required to report to the Comptroller of the State, and others to the Supreme Court. The powers and privileges granted to one differed perhaps radically from those granted to another. Some of the charters were extremely liberal in their provisions, and included powers which would be regarded as inconsistent with the proper functions and purposes of these institutions as they have developed and as they exist to-day. There was no supervision, except of a superficial and perfunctory character. There was no comprehensive system of reports, and the whole matter was in a chaotic condition. Notwithstanding all this, and though

there have been instances of voluntary liquidation and of merger and consolidation, there have been but two failures of trust companies in the history of the State where the depositors and general creditors were not paid in full. One of these failures was that of the National Trust Company, which occurred in 1877, and the other The American Loan and Trust Company, occurring in 1891.

In 1887 a general act was passed in the State of New York regulating the formation of trust companies and defining their powers and privileges. This act provided that any number of natural persons (not less than thirteen), three-fourths of whom should be residents of the State, might associate themselves together for the purpose of organizing a trust company; that in no material respect should such company's name be similar to the name of any other trust company organized and doing business in the State; that the certificate should state the place where the business was to be transacted, the amount of the capital stock and the number of shares into which the same should be divided, and the name, residence and post office address of each member of the company; the term of the company's existence, which should not exceed fifty years; and the declaration that each member of the association would accept the responsibilities and faithfully discharge the duties of a trustee if elected to act as such. It provided that the certificate should be executed in duplicate, one of which should be filed in the office of the Clerk of the county wherein the trust company was to be located, and the other in the office of the Superintendent of Banks. It also provided for the publication for four weeks of a notice of intention to organize. It defined the powers and duties of trustees. It provided that the capital stock must be at least five hundred thousand dollars, except that trust companies with a capital of not less than two hundred thousand dollars might be organized in cities the population of which did not exceed one hundred thousand inhabitants.

It also provided that the capital of the company should be invested in bonds and mortgages on unincumbered real estate in the State of New York, worth at least double the amount loaned thereon, or in stocks of the State of New York, or of the United States, or in the stocks or bonds of incorporated cities or counties of the State of New York duly authorized to be issued. It provided further that all trust companies organized under the act should be

corporations possessed of the powers and functions of corporations generally, and as such should have power:

To make contracts;

To sue and be sued, complain and defend, in any court as fully as natural persons;

To act as fiscal or transfer agent of any state, municipality, body politic or corporation; and in such capacity to receive and disburse money, and transfer, register and countersign certificates of stock, bonds or other evidence of indebtedness;

To receive deposits of trust moneys, securities and other personal property from any person or corporation, and to loan money on real or personal securities;

To lease, purchase, hold and convey any and all real estate necessary in the transaction of its business, or which the purposes of the corporation may require, or which it may acquire in the satisfaction, or in partial satisfaction, of debts due the corporation under sales, judgments or mortgages;

To act as trustee under any mortgage or bond issued by any municipality, body politic or corporation, or accept and execute any municipal or corporate trust not inconsistent with the laws of the State;

To accept trusts from and execute trusts for married women, in respect to their separate property, and to be their agent in the management of such property, and to transact any business in relation thereto;

To act under the order or appointment of any court of record as guardian, receiver or trustee of the estate of any minor the annual income of which is not less than one hundred dollars, and as depositary of any moneys paid into court;

To manage estates, collect rents, etc.;

To take, accept and execute any and all such trusts and powers of whatever nature or description as may be conferred upon or intrusted or committed to it by any person or persons, or any body politic, corporation or other authority;

To purchase, invest in and sell stocks, bills of exchange, bonds and mortgages, and other securities, not including, however, the power to issue bills to circulate as money;

To be appointed and to accept the appointment as executor or trustee under the last will and testament, or as administrator with or without the will annexed, of the estate of any deceased person, and to be appointed and to act as the committee of the estates of lunatics, idiots, persons of unsound mind and habitual drunkards.

The act also provided that no loan should be made by any trust company, directly or indirectly, to any trustee or officer thereof.

It was also made the duty of the Superintendent of Banks to ascertain from the best sources of information at his command whether the general fitness for the discharge of the duties appertaining to such a trust of the persons named in the certificate was such as to command the confidence of the community in which such trust

company was proposed to be located, and whether the public convenience and advantage would be promoted by such establishment. It was left entirely to the discretion of the Superintendent, based upon the result of these inquiries, to authorize, or not to authorize, the formation of the company. These are the principal features of the law of 1887.

In 1892 a general and comprehensive revision of the Banking Laws was made and embodied in one act, now known as the "Banking Law," which relates to all corporations under the supervision of the Banking Department, including State Banks of Discount, Trust Companies, Savings Banks, Building and Loan Associations and Safe Deposit Companies.

There have been some amendments to the general law of 1887, but, with one or two exceptions, these amendments have been of minor importance, and the law to-day is substantially that passed in 1887, the principal features of which have been summarized.

One of the amendments in the revision of 1892 provided that every trust company incorporated by special law should possess the powers of trust companies incorporated under the general law, and be subject to such provisions of the general law as are not inconsistent with the special laws relating to such specially chartered companies:

Another provided that companies might be organized with a capital of $150,000 in cities containing more than twenty-five thousand and less than one hundred thousand inhabitants, and with a capital of $100,000 in a city or town containing not more than twenty-five thousand inhabitants; and

Another allows a director or officer to borrow a sum not exceeding ten per cent. of the capital stock upon the approval of the Board of Directors.

The law also provides that the capital of every trust company shall be invested in bonds and mortgages on unincumbered real property in this State to an amount not exceeding sixty per centum of the value thereof, or in the stocks or bonds of the United States, or of the State of New York, or of any county or incorporated city of the State of New York duly authorized by law to be issued.

It compels the Superintendent to examine, or cause to be examined, every trust company in the State at least once in each year,

and empowers him to make an examination also, whenever, in his judgment, it may be necessary or expedient to do so.

It requires each company to report to the Banking Department its condition on the morning of the first days of January and July, which report must be in such form, and contain such particulars as the Superintendent may designate or require.

It is also provided that, if it should appear to the Superintendent of Banks that any trust company has violated its charter or any law of the State, or is conducting its business in an unsafe or unauthorized manner, he shall, by an order under his hand and official seal, addressed to the company, direct the discontinuance of such illegal or unsafe practices; and, if it shall appear to the Superintendent that it is unsafe or inexpedient for the company to continue business, he shall communicate the fact to the Attorney-General, who shall thereupon institute such proceedings against the company as are authorized in the case of insolvent corporations, or such other proceedings as the nature of the case may require.

There are in New York State to-day seventy-nine trust companies, twenty-five of which were organized under special charters, and the others under the general law, but in practice all exercise substantially the same powers and are engaged in the same classes of business, and are now controlled by substantially the same laws.

A few statistics concerning them may be of interest, and perhaps important in considering what should be done, if anything, in the way of enlarging or extending State supervision and control. There were eighty-one trust companies in the State on the first day of January, 1904, forty-eight of which were located in the city of New York:

The combined capital on the first day of January, 1904, was	$63,750,000
Their surplus and undivided profits on book values	141,504,561
and on market values	143,087,880
Amount due depositors, including the amounts due other trust companies, savings banks and banks	807,182,140
Their combined resources amounted to	1,039,735,828
They had—	
Bonds and mortgages	59,534,679
Bond and stock investments	225,386,955
Loaned on collateral	510,928,626
Bills purchased	56,714,963

Real estate	14,376,379
Cash on deposit	125,392,247
Cash in vaults	26,894,136
and overdrafts amounting to but	41,123

Their net earnings for the year 1903 were $17,383,608, or $8,333,756 in excess of dividend distributions.

The New York law, though excellent in character and comprehensive in scope, is not perfect. In a report to the Legislature in January, 1904, the writer recommended that trust companies located in the city of New York be compelled to keep legal reserves of fifteen per cent., one-third in cash and the balance on deposit. For the balance of the State ten per cent. was suggested, one-half of which should be in cash. This proportion seems sufficient when we take into consideration the fact that a trust company is obliged to invest its capital in the manner heretofore pointed out.

The Clearing House has attempted to regulate this question by an amendment to its constitution, prohibiting Clearing House privileges to trust companies unless they keep a reserve in accordance with the Clearing House requirements. The Clearing House, however, is powerless to compel the observance of its rule. The trust companies simply withdraw from the privileges of this institution if they do not wish to observe its regulations. In any event, but few of them ever availed themselves of these privileges.

It is, of course, proper, and in accordance with the well established policy of the law, that trust companies should be the custodians of trust funds and moneys not daily employed in the business of the country; and I am not aware that any state prohibits a trust company from receiving on deposit the moneys employed in the daily and active business of merchants, manufacturers and other business men. It is doubtful, however, if this was the original intention of the framers of the laws, either special or general, under which trust companies are organized.

I may seem to have given too much attention to the banking features of my subject at the expense of the trust features.

It is exceedingly difficult sometimes to distinguish between deposits which are genuinely trust deposits and those of a purely banking character. One great and conservative trust company in the city of New York reports all of its deposits as trust deposits,

and yet the only difference between these and ordinary deposits is that they are represented by certificates containing the provision that they will be paid upon five days' notice. But commercial deposits form so large and important a feature in the transactions of all the companies that control and supervision in this direction necessarily covers, if not the details, at least the general character of transactions, and determines whether a company deserves confidence, or needs to be curbed and corrected in its operations.

On January 1st, 1904, the trust companies in the State of New York reported trust deposits to the amount of $215,929,174, all but about $7,000,000 of which are in trust companies in Greater New York.

The trust companies of the State had at the same time general deposits amounting to $591,252,966, included in which are $35,000,000 belonging to other trust companies, $35,000,000 belonging to savings banks, and $20,000,000 due banks, bankers and brokers.

If, therefore, trust companies are allowed to take on deposit active business accounts, they should be compelled to keep a safety fund in the way of a reserve against deposits of this kind, as Banks of Deposit and Discount are obliged to do.

In the report mentioned it was also recommended that trust companies be prohibited from engaging in underwriting schemes:

"Trust Companies should be prohibited by law from engaging in underwriting schemes. In my opinion it is sufficient for them to be allowed to invest in the securities of private corporations only after these securities have had inception and their value tested upon the market. Those who underwrite enter into their engagements, of course, upon the expectation of being able to market the securities for which they subscribe at a greater price than that which they promise to pay. This is not investment; it is speculation, in which trust companies ought not to be allowed to use the money of their depositors.

"The experiences in New York within a year or two, where bonds thus put out have had very great depreciation, regardless of the strength of their support, have occasioned many regrets and sore memories. I hold, therefore, that it is not enough that the door be closed effectually against excessive purchases of stocks of private corporations, but that it should be shut also against a too close and dangerously large identification in any manner of the fortunes of a trust company with experimental and hazardous schemes for the financing and development of properties, which, even if eventually successful, may have before them long years of uncertainty and difficulties. The public's deposits deserve to be guarded against such reckless employment, and the statute should be so changed

as at least to impose a limit beyond which operations along such lines can not be lawfully carried."

Since the report was written no grounds have arisen for a change in the views there expressed. In fact, further reflection but confirms the opinion that Trust Companies should be absolutely prohibited by law, not only from investing on their own account in the untried and "undigested" securities which, especially of late, have been so prevalent in the markets, but also from so identifying themselves with highly speculative ventures as to create the impression with the public that the trust companies are sponsors or guarantors for such enterprises. The good name of a financial institution should be a real and substantial asset, and good faith should be always a characteristic of its management, so that its indorsement, even if implied only, may be accepted with absolute confidence and trust. A trust company cannot afford, nor should it be permitted under the law, to lend its credit or give its moral support to enterprises which, through reckless violation of sound principles, may involve scandals and disaster.

I fear there is a popular impression that it is an ordinary and frequent occurrence for trust companies to engage in enterprises of this kind, and in a general way to enter the field of speculation. This, so far at least as New York State is concerned, I can positively refute. Two or three unfortunate instances of the kind, to which great publicity has been given, have created the impression that trust companies, especially in the city of New York, are in a general way engaged in promoting schemes and in underwriting the securities of corporations and combinations unworthy of public confidence.

Many people rush to the conclusion that, because one company has committed flagrant violations of the law and engaged in schemes of the kind to which I have referred, therefore all must be to a greater or less extent involved in the same unwarranted and unlawful practices. This was well illustrated in the story of the failure of the United States Shipbuilding Company, and of the connection of the Trust Company of the Republic with the financing of that corporation's affairs. This was a case where liabilities were incurred which not only jeopardized the solvency of the trust company, but flaggrantly transgressed the law. Upon the first intimation that the trust company had made unusual commitments a special inquiry

was instituted by the Banking Department, and I confess that I was amazed at the extent to which the president of this company, either with the passive acquiescence of the directors, or without their knowledge, had committed his company. Through the power given me by the law I was enabled to save all depositors from loss, and the company from dissolution, by using its entire surplus and one-half of its capital stock of one million dollars. The publicity of this affair did more to discredit the trust companies in the city of New York, and especially some of the newer organizations, than anything that has happened for years. It has, at the same time, furnished a salutary lesson and warning.

But let me emphasize that I must not be understood as asserting that there is no opportunity for improvement in the general administration of these companies' affairs, though I do wish to dispel the impression that they are as a class engaged in dangerous and speculative enterprises, or are being conducted in a reckless and unsafe manner. Their stability and soundness have been too well tested during the long years of their operation in New York State to require other refutation of this general insinuation, and instances of unlawful procedure or reckless investment by them are too infrequent to warrant any general distrust of their stability. If the laws under which they are organized are imperfect or inadequate, they can be amended. If the powers of the Superintendent are insufficient, they can be increased. If the Superintendent is incompetent or neglectful of duty, he can be replaced.

There is no general law in the State of Massachusetts for the organization of trust companies. There is, however, a bill now before the Legislature of that State for that purpose, drawn largely upon the plan of the New York law. A bill has also been introduced compelling trust companies to keep reserves, and regulating the amount. There is a general law of the State (Chapter 116 of the revised law) which provides that domestic trust companies incorporated subsequent to the 28th day of May, 1888, shall be subject to its provisions, and that any such corporations chartered prior to that date which have adopted, or which shall adopt, according to law, the provisions of that chapter, or any section thereof, or the corresponding provisions of earlier laws, shall be subject to the provisions so adopted.

Michigan has a very comprehensive general law for the organization and control of trust companies. Organization under it, however, is unrestricted.

Maine has no general law for organization or control. All trust companies in that State are organized by special legislation. Before 1893 these special charters contained various provisions such as might suggest themselves to the parties seeking them. Since that time, however, they have been modelled after a general form regulating their powers, and providing for State control and supervision to a limited extent.

In Illinois trust companies are quite generally organized under the banking act, which confers upon State banks the power to accept and execute trusts. Before assuming the exercise of such powers, however, they must deposit certain securities with the State Auditor.

Connecticut has no general law whereby any bank, savings bank, or trust company can organize or do business. Each derives its powers from special legislation. It has, however, a general law governing State Banks and Trust Companies, but the power of supervision is inadequate.

Pennsylvania does not seem to have any general law for the organization of trust companies. They are organized under the General Corporation Act of 1874, and their powers are defined in various supplements to that act, passed in 1885, 1889 and 1895. It, however, has a general law very much like that of New York providing for supervision and defining the powers of the Commissioner of Banking.

New Jersey has a general act under which trust companies may be organized, and defining their powers. This act is also very similar in many features to the New York law.

New Hampshire and Vermont have no general laws upon the subject so far as uniform method of organization is concerned. In Vermont many of the trust companies have the words "savings bank" in their titles, although they have no savings bank powers.

Ohio and Minnesota both have general laws for the organization of trust companies, and defining their powers and privileges and providing for their supervision.

The banking law of Wisconsin makes no provision whatever for the organization, supervision or control of trust companies. So I

assume that the institutions of this kind in that State, if any exist, are the creatures of special legislation.

It will be seen that each State is a law unto itself in the matter, and that the variety of powers, privileges and purposes of trust companies in the country is only limited by the conditions and necessities existing in different localities and the conceptions of human ingenuity. The Federal government has not the power to regulate or control in matters of this kind. This power must be left to the respective States, where I believe it can safely remain, though it is to be recognized that the question ought to have the best and most careful consideration that financiers and publicists can give to it. The one tendency most to be feared regarding it is the too great readiness of some legislatures to grant to trust companies charters containing almost unlimited powers. The possession of power carries the temptation to use it, and if a corporation has the legal right to exploit a railroad or a mine in China or Timbuctoo, or to finance speculative schemes wherever it may choose, it is almost certain that some restless, not to say reckless, mind will be found in its directorate who will not be content while such power stands unemployed. The way of safety is, therefore, for legislatures to deny applications for trust company charters that permit any extraordinary latitude of operations out of which disaster might result. The ideal system would undoubtedly be a conformation ultimately of all charters of institutions of this class to some one general plan based upon conservatism and safety. This is probably not as yet practicable—perhaps not even advisable at present; for, while in my opinion it would be well if substantially uniform laws, liberal enough to include all desirable features and privileges, and yet sufficiently restrictive to prevent unsafe practices, could be enacted by all the States, diverse conditions existing in the different States might make it necessary to add to, or take from, general privileges, or it may be require more or less restrictive features in some localities which would not be salutary in others.

Experience is a great teacher, and the defects in our laws relating to trust companies, the mistake of granting of savings bank, banking, insurance, title guarantee, safe deposit and trust company privileges all in one charter, the granting of too generous privileges, or the enactment of excessive restrictions, will, in my opinion, all

be righted and regulated eventually, as experience and considerations of public safety, backed by an enlightened public sentiment, shall demand. Much has already been accomplished; evolution in this field having been going on for years, and still continuing. Especially is this true of the great financial centers of the East. I do not believe that there was ever a time when the general condition of the trust companies of New York was better than at the present. It must be remembered that they have more than doubled in number during the last six years, as they have also doubled in deposits and general resources. The marked depreciation in values and depression in business which have taken place in the last two years have been a great strain upon all financial institutions, and when we remember that not a trust company in the State of New York has become insolvent through it all, or failed to pay all debts upon demand, there would seem to be slight cause for apprehension regarding their safety, or room for criticism of their management.

I speak of my own State freely because I am familiar with conditions there, and can speak from knowledge. There is no reason why results should be different in other States where conditions and laws are substantially the same. I do not hesitate to state that the practices of some companies have met with just condemnation. Occasionally I have had reason to deplore and criticise the general condition and the policy of some companies under my supervision, but anything of a nature serious enough to imply failure or disaster, or to produce an unsafe or unsound condition, is exceedingly rare. Unsafe or even unlawful practices cannot be eliminated wholly in trust companies or other financial institutions so long as human nature remains fallible.

Aside from the conservative management which these institutions enjoy, I believe that the laws of the State of New York have done more to conserve their welfare than any other thing. Your president (and I hope I am not violating any confidence) in a letter to me used the expression "unregulated developments in matter of trust companies." In some States organization is unrestricted in the sense that no officer has the power to prohibit, provided the procedure is in accord with the statute, but in New York and in some of the other States a trust company can not be organized without the consent of the Superintendent of Banks, based, as has

been suggested, upon the fitness of the proposed incorporators and the advantage and convenience of the public; and, while many trust companies have been organized in the State of New York in the last six or eight years, more applications have been refused than have been granted.

Since the business of the country became less active, and business incorporations and combinations less frequent, the desire for trust company organization has proportionately abated. I am unqualifiedly in favor of State control, adequate and close control, not only of trust companies, but of all institutions of a financial nature which invite the public confidence and deal with the people's money. This control should be sufficiently comprehensive to regulate the organization, provide ample supervision, and restrict investment, in a way that will conserve, in so far as human ingenuity can provide, the interests of the public. Investment by such institutions, in untried securities, promotion of questionable enterprises, speculative underwriting of stocks or bonds, and all other acts of a nature involving dangerous investment or promotion of individual interests, should not only be prohibited, but made a penal offense if indulged in contrary to law. It would be well if the name "Trust Company" could have a uniform meaning throughout the land, always implying strict compliance with wise laws, adequate State supervision and control and conservative and safe management.

The Financial Reports of National Banks as a Means of Public Control

By F. A. Cleveland, Ph.D., New York University

THE FINANCIAL REPORTS OF NATIONAL BANKS AS A MEANS OF PUBLIC CONTROL

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The inquiry suggested by the title would seem to be one of possibility rather than precedent or present practice. Assuming this point of view, discussion will first proceed from a consideration of the law under which powers of control may be exercised. Broadly speaking, there are three legal questions raised: (1) What are the powers of control given by the National Bank Act? (2) Under the Act, what are the purposes for which control is to be exercised? and (3) In the exercise of powers granted by the Act, what devices or means may be employed by the Comptroller to reach these ends?

The Powers of Control given by the National Bank Act.

The first of these questions may be answered by direct appeal to the language of the Act. Section 87 of the National Banking law (Section 5211 R. S.) contains this specific mandatory declaration: "Every Association (*i. e.*, National Bank) shall make to the Comptroller of the Currency not less than five reports during the year, according to the form which may be prescribed by him." This general provision is supplemented by grants of specific power to the Comptroller, which enable him to call for other reports as often as he may desire, and to obtain such information as he "in his own judgment" thinks necessary "to a full and complete knowledge" of financial condition; a bank failing or refusing to comply with such request is liable to a penalty of $100 per day (Sec. 5213 R. S.). It would appear, therefore, that the Comptroller is not lacking in authority to obtain any and all information which may be necessary to administrative supervision. A further reading of the National Bank Act quite as concisely forces the conclusion that the Comptroller has all the power necessary to a complete control over National Banks and their operations, as to all subjects which are properly

within the range of official discretion; this power extends even to the taking possession of the bank itself and winding up its affairs for failure to comply with his demands.

The Purposes for which Control is to be Exercised.

This brings us to consider the second question raised, viz.: the subjects of official discretion, or *the purposes for which official control is to be exercised* under the Act. It has been repeatedly affirmed that the prime purpose of the National Bank Act was to create a better market for Government bonds at a time when the National credit needed support. In the midst of civil strife when the financial resources of the nation were strained almost to the point of bankruptcy it was conceived that a very large part of the capital employed in commercial banking enterprise in the United States might be utilized to support the Government. The plan proposed was an old one—one in which the banks, being induced to use their capital to purchase Government bonds, would be permitted to use bank notes with which to carry on their business. By this device it was thought that the financial strength of the banks might be brought to the support of the Government—*i. e.*, that the State banks might be induced to bring over their capital into a new National system where it might be utilized in the manner indicated.

To make such a scheme acceptable, however, two conditions must be met: The first result of such a plan of support to the bond market would be a large increase in the money circulation of the country; the bank-note would not be received unless it were made as sound (*i. e.*, as valuable) as the money then in current use—the greenback. But this was not the only condition that the Government must reckon with. In the experience of the past, business had suffered quite as much from unsound bank credit in the form of customers' accounts (or deposits) as it had from an unsound currency. National reaction against "wild-cat" banking had but recently forced the several State systems over to a basis of capitalization and official inspection to protect the people against wholesale fraud and bankruptcy. If these State institutions were to be brought into a National banking system—if the Government was to utilize their capital resources to fund its own necessities—the new National system

must carry with it all the provisions for safety and for the protection of the public against the speculative devices of the unscrupulous that three decades of legislative reaction had evolved.

Wild-cat banking was banking on "commercial assets" without adequate capitalization. From 1837 to the time of the Civil War the whole trend in banking ideals and in banking legislation was toward the strengthening of banking equipment. It had been found from bitter experience that a bank which was not properly capitalized, and which therefore did not have capital resources sufficient to support its credit transactions, was as dangerous to those coming into business contact with it as was a mine or a factory whose construction was faulty and whose machinery was overcrowded. To the public, the poorly-equipped bank was much more dangerous than the mine or the factory by reason of the fact that, in case of collapse, a much larger number of people were constantly within the danger line.

After two years of agitation and amendment and compromise an acceptable law was enacted. This Act carried with it two protective features: (1) the note was to be secured by a collateral deposit of bonds purchased, and (2) those holding the credit accounts of the bank were to be protected by provisions which required what was thought to be adequate capitalization before business might be begun, and by the exercise of official supervision to prevent "impairment of capital" during the period that business should continue. It was for the purpose of enforcing these two provisions of safety and security that the Bureau of the Currency was created and a Comptroller was appointed.

Means by which Control may be Exercised, and the Ends of the Act Reached.

The functions of the Comptroller have a direct relation to the conditions above described. The first or, as it was then viewed, *the prime purpose* for which public control was to be exercised was *to guarantee the soundness of the new National currency.* This is clearly expressed in the first clause of the Bank Act which recites: "There shall be in the Department of the Treasury a Bureau *charged with* the execution of all the laws passed by Congress relating to *the*

issue and regulation of a National currency secured by United States bonds; the chief officer of which Bureau shall be called the Comptroller of the Currency * * * ." The *second purpose* of the appointment of a Comptroller is set out in various subsequent portions of the Bank Act designed *to insure adequate capitalization.* These later provisions of two classes, viz.: (1) Those designed to require adequate capitalization as a condition precedent to commencing business, and (2) those intended at all times to secure customers against loss on account of "impairment of capital."

That the "National Currency" which was to be issued through the agency of the banks might be kept as sound as the standard money (*i. e.*, that all forms of money issues might have a common valuation) provision was made that the bonds purchased by the banks might be hypothecated with the Treasurer as collateral security for final payment and redemption of notes outstanding. According to the provisions of the Act the Government was made a trustee for the benefit of noteholders. For each $900 of notes turned over to the bank by the Government for issue, the Treasurer was to hold a non-interest bearing account with the bank secured by a $1,000 bond. The obligation of the bank to the Government was for the repayment of $900 in bank notes, or legal tender money at its own option. The Government as trustee was the legal owner of the bond. The beneficiaries were (1) the noteholders to the amount of notes held, and (2) the bank for the amount of the current income on the bond and for its equity of redemption. This made the bank the immediate agency of redemption of the new currency, and the Treasurer, as trustee, the agent of ultimate redemption. Such a plan of National currency having been adopted, when a bank issued a note the customer took it, not on the credit of the bank, but as a beneficiary in the trust security held by the Government. The noteholder never inquired as to the credit of the bank through which the note was issued, but relied entirely on his claim against the security held in trust by the Treasurer. Since both bonds and greenbacks were Government credit the National currency secured by Government bonds was taken by the public to be as good as a greenback. Later when both greenbacks and bonds were redeemed in gold, this National currency came to be considered as good as gold. As a means of control (to secure the soundness of the circula-

tion or National currency so issued), therefore, the function of the newly created Bureau was to see that the trust account of the bank with the Treasurer was kept amply secured, and that the bonds held as collateral security were sufficient for this purpose. But all the data were at hand for determining this fact, and, the bonds themselves being in custody, the services of the Comptroller in his capacity as guardian of the currency became merely nominal and perfunctory. Moreover, for this service no *report* was necessary.

The Chief Functions of the Comptroller.

Not so, however, with the second function of control exercised by the Bureau—the protection of those who hold open accounts (or deposits) of the bank. The importance of this character of official guardianship has correspondingly increased—but not in its bearing on original capitalization. As at the beginning, the method of ascertaining whether the bank had the requisite capital resources to commence banking operations, has remained one of inspection and not one of financial report. The Comptroller must know that at least 50 per cent. of the amount of the authorized capital stock is actually in hand in money, and that the balance of the stock subscription is good, so that it may be realized in 10 per cent. monthly installments.

The most difficult duty which the Comptroller has to perform and the one of increasing importance to the financial world, is that which pertains to the security of the public against the "impairment of apital resources" *during the period that the bank continues in operation.* Knowledge as to the feature of the work must come largely from the reports made by the banks themselves, as the number of examiners is grossly inadequate to report more than a check on some of the main items of account. It is from this duty that the subject assigned takes its chief bearing.

Protection of the Public Against Impairment of Capital Resources.

To state more specifically some of the questions that the Comptroller must have in mind in asking for reports with respect to capitalization, Section No. 5202 R. S. provides that "no Association at any

time shall be indebted, or in any way liable, to an amount exceeding the amount of its capital stock (capital resources) at such time actually paid in, and remaining undiminished by loss or otherwise, except on accounts of the nature following: (1) Notes of circulation; (2) Moneys deposited with or collected by the Association; (3) Bills of exchange or drafts drawn against money actually on deposit to the credit of the Association, or due thereto; (4) Liabilities to the stockholders of the Association for dividends and reserve profits." Section 5203 R. S. specifies that "no Association shall either directly or indirectly, pledge or hypothecate any of its notes of circulation for the purpose of procuring money to be paid in on its capital stock, or to be used in its banking operations or otherwise; nor shall any Association use its circulation notes or any part thereof in any manner or form to create or increase its capital stock (capital resources)." Section No. 5204 recites that "no Association or any member thereof, shall, during the period it shall continue its banking operation, withdraw or permit to be withdrawn, either in the form of dividends or otherwise, any portion of its capital (capital resources)." Again, in Section No. 5205 R. S. the law requires that "every Association which shall have failed to pay up its capital stock, as required by law, and every Association whose capital stock (capital resources) shall have become impaired by loss or otherwise, shall, within three months after receiving notice thereof from the Comptroller of the Currency, pay the deficiency in capital stock (capital resources) by assessment upon the stockholders *pro rata* for the amount of capital stock (capital liability) held by each."

All of these, and other assignments of duty with respect to the protection of customers against impairment of capital, make necessary an official inquiry into the relation of *capital* resources to *capital* liabilities. They require a specific inquiry as to the capital resources at hand. For the purpose of determining whether or not the capital equipment of the bank has become impaired through "loss" on account of banking operations or "otherwise" a keenly analytical report is necessary. To properly execute this function of control it is necessary to distinguish the *capital* resources and liabilities, from the *other* assets and obligations of business.

The Present Value of the Report to the Comptroller as a Means of Control.

In taking up the "form" of report made by the banks to the Comptroller, attention will be confined to the inquiry as to whether or not it is well designed to give the information necessary to the exercise of sound official discretion. Is the form of report such as to enable one to determine whether the *capital resources* have become *impaired?* An examination of financial statements, as at present made, will disclose the fact that no attempt is made to distinguish "capital" resources and liabilities from the assets and obligations current to the business.

For the purpose of determining financial condition of a going concern, it has become an established principle of analysis that capital resources are all those properties and assets which are intended for permanent or continuous use in the business. Two principles of administration are well settled: (1) To prosecute an enterprise successfully, it is necessary to provide the management with equipment adapted to its purposes; and (2) whatever property, equipment, and stock, is permanently or constantly needed, should be provided out of capital investment. This is the purpose for which capital is needed. Proper equipment is necessary to success. As a matter both of financial advantage and of financial safety, this equipment should be provided out of capital. To attempt to provide permanent equipment out of temporary loans, or floating debt, is to hold the enterprise in constant jeopardy. This is as true of a bank as it is of a railroad or of a mine, and this is the underlying thought of the Law.

The *current assets* of an enterprise are those which are acquired, not for *equipment use* in the business, but those which are acquired in its current transactions—*i. e.*, in the course of current operation for profit. It is to fund the current needs—to meet the current expenses—to provide funds to carry these current assets and transactions—that current liabilities or floating debt is incurred. If the principles of financial analysis commonly employed in accounting are applied to the assets and liabilities of national banks, conclusions may be reached as to whether or not the capital resources have been impaired as well as whether or not the permanent equipment is

adequate to support its operations with safety to those who may be in business contact with the institutions under examination.

What are the Capital Resources of National Banks?

The reports, as at present made to the Comptroller, are not based on such a system of analysis, and, therefore, any attempt at rearrangement to this end must be in a measure unreliable. But taking the various items of resource exhibited as a basis for present discussion, a fair approximation may be reached: (1) "Banking houses and fixtures" are unquestionably capital resources. (2) "Real estate," in contemplation of law and from every point of business reasoning, should be charged against capital. (3) The bank invests its capital in bonds to secure circulation, and receives on the collaterals deposited notes which may be used in the business—the "margin" of capital invested in these collaterals should be considered a capital charge; the same is true of the "margins" invested in the collaterals deposited to secure Government deposits. (4) The "money reserve" is essentially a capital reserve; it is the principal equipment necessary to support the current credit accounts (deposits) outstanding—the floating debt of the business. There can be no doubt that the "cash" held by a bank should be a direct charge against capitalization, and is made so by legal enactment—the only question with reference to this class of items pertains to the interpretation to be given as to what properly constitutes "money reserves." (5) The accounts which it is necessary for a bank to maintain to provide for an "exchange" are likewise an asset permanently needed and in continuous use; they should, therefore, be counted as a part of the necessary banking equipment. (6) Finally the "unencumbered securities" and "other direct investments of capital" owned and held by a bank as a means of strengthening its money reserve should be regarded as capital resource. These must be so considered for the reason that the direct application of capital to the purchase of "securities," or for that matter even the purchase of commercial paper, is not banking. There can be one purpose only for making such purchases, viz.: to keep the capital which is needed to support credit transactions invested in income-producing assets when not needed in the form of "cash." "Securi-

ties" must be considered either as banking equipment, or as an investment which is a charge on capitalization. The same is true of all other direct investments of capital. A bank which engages in buying and selling "securities," in "underwriting flotation" or in other business not in the nature of banking, needs to have a larger capital than an institution which does not so engage itself. Whether the capital investment be in banking equipment, or in other assets and business ventures, the amount of funds thus engaged by the banks should be set up as capital resources, or charges against the capital provided for doing business, the protection of which is the chief end of control.

These several classes of assets being in the nature of capital resources, the relations, pertaining to which the duty of the Comptroller obtains, are to be found: (1) in a comparison of the *capital resources* on hand, with the amount of capital provided for use of the institution under examination; and (2) in an examination of *current assets* to ascertain whether there have been any losses suffered in the prosecution of the business, since all "bad loans," etc., must be charged against capital. The accounts exhibiting capital put into business are found on the liabilty side of the balance sheet. The capital provided for use is represented in three controlling accounts, viz.: "Capital Stock," "Surplus" and "Undivided Profits." Of these the first two items are permanently reserved for use in the business, and the third must remain in it so long as there is any question as to the impairment of capital resources. Before any comparison may be made for the purpose of determining what character of investments has been made of capital put into the business, the statement of assets reported by the banks must be assumed to be based on a proper valuation, or a critical examination must be had. For this purpose the Comptroller may supplement the report made by the bank itself, with the report of his examiners in whose field the bank lies, or may detail a special examiner if the case seems to warrant such an assignment. In any case, however, a distinction must be made between the current accounts and the capital accounts.

Classification of Balance Sheet to Show Financial Condition.

Intelligent judgment as to the character of equipment provided

by a bank by capital investment requires a *classification of resources*. The exercise of official discretion with reference to the integrity of capital resources which proceeds from the examination of financial reports, makes a *classified balance sheet* a necessity. To the end of establishing a basis for the further discussion of "the financial report as a means of control," and at the same time of showing some of the difficulties which stand in the way of the exercise of effective control under the present form of report, an analysis of the consolidated statement of all the National Banks of the State of Iowa for September 9, 1903, is here exhibited. The classification submitted is not offered as a model in the arrangement of items. Neither is the assignment of inadequacy of the present form intended to reflect on Comptrollers past or present. The form now used is in effect that which has been employed by officers of banks for a century; it has been used by comptrolling officers of government since public examination first began. Suggestion that a change might be made to advantage is not therefore to be considered as offered in the spirit of reflection on official conduct, more than a proposed amendment of law would imply legislative incapacity. Not engaging any spirit of personal criticism and holding in mind my own inability to do more than suggest that a classified balance sheet is essential to further consideration of the topic assigned, the following statement of capital accounts is modestly offered as a tentative and provisional arrangement:

CAPITAL ACCOUNTS.

Capital in the Business.

I.	Capital Stock	$14,881,550
II.	Surplus	3,533,641
III.	Undivided Profits	2,085,923
	Total Capital in the Business	$20,501,114

Capital Investments and Equipment.

I.	Banking-house, etc.	$2,193,300
II.	Real Estate	347,775
III.	Margins:	
	1. Amount invested in Collaterals:	
	(1) U. S. Bonds for Circulation, $8,742,010	
	(2) U. S. Bonds for Deposit .. 2,391,100	

	(3) Other Sec'ties for Deposit	.....		
	(4) Premium on Bonds (?)	313,006		
	(5) 5 per cent. Fund in Treas y	424,880		
	Total Investment		$11,870,996	
	2. Less Cash Received:			
	(1) Circulation	$8,690,245		
	(2) U. S. Deposits	2,324,773		
	Total Avails		11,015,018	
	Capital Invested in Margins			855,978
IV.	Cash Reserves:			
	1. Cash Items (?)		$475,136	
	2. Bills of Other Banks		481,461	
	3. Frac. Currency		36,515	
	4. Specie		2,988,269	
	5. L. T. Notes		1,498,104	
	6. U. S. Certificate of Deposit		.....	
	7. Due from U. S. Treasury		8,512	
				5,487,997
V.	Balances kept with Banks for Exchanges (?)			2,100,000
VI.	Unencumbered Securities:			
	1. Securities Owned:			
	(1) U. S. Bonds on Hand	$18,400		
	(2) Stocks, etc.	3,147,380		
	Total		$3,165,780	
	2. Less Incumbrances:			
	(1) Bonds Borrowed	$53,210		
	(2) Bills Payable (?)	624,500		
	(3) Other Liabilities (?)	79,816		
	Total		757,526	
	Amount Invested in Unencumbered Securities			2,408,254
VII.	Other Direct Investments of Capital:			
	1. Loans to Reserve Agents			7,107,810
	Total Capital Investments and Equipment			$20,501,114

Attempting to state the amount of capital put into the business, and to account for its investment, in the above exhibit it is assumed that the valuation of assets represented in the reports of the Comp-

troller is conservatively made, and that there are no "bad loans" to be written off. But even with this assumption, and for this purpose, the form of report made by the banks to the Comptroller renders many of the items doubtful: (1) In the statement of "premium on bonds" as one element in the computation of the amount of capital locked up in "margin" there is no way of distinguishing this from premium on "bonds on hand;" (2) In the "cash items" it is of frequent occurrence for banks to include expense vouchers which are to be held till the end of the month; in so far as these were included the statement of the amount of "cash reserve" is too large; (3) the amount stated as "balance kept with banks for exchange" must be roughly approximated as no specific inquiry is made in the present form submitted by the Comptroller to determine this fact—the amount of clearing-house exchanges held is $141,000; assuming that the amount of exchanges outstanding against the banks under consideration averages $175,000, and further, that it requires on an average three days for them to be presented and paid, the average balance needed to be kept for the redemption of exchanges would be $525,000. Assuming again that four times this average amount would place the banks of Iowa in a position at all times to meet exchanges, it would be necessary to carry only $2,100,000 on account with other banks for exchange purposes—this amount is arbitrarily set up; (4) under the head of "incumbrances" on "securities owned" it is assumed that the "bills payable," and "other liabilities," stand as incumbrances on stocks, bonds, etc. This is true to the extent only that these liabilities are based on stocks and bonds hypothecated as collaterals, and in so far as this is not true the account would be varied by an exact return such as might be obtained from the bank; (5) the amount exhibited as "loans to reserve agents" is stated on the assumption that the purpose of such investment is to have a quickly convertible asset by means of which cash may be obtained when the money reserve runs low—a bank making a statement to the Comptroller under a form calling for this specific item of capital reserve might set up some other form of asset as a "direct capital investment." In each and all of the items above mentioned there are elements of doubt—elements which require questions to be raised; but each

of them might be made certain by a different form of inquiry sub mitted to the banks by the Comptroller.

The Uses which may be made of such an Analysis.

But assuming for the purposes of present discussion that the above analysis of capital investment were true to the facts, let us see what use might be made of such form of report. In the first place we may seek to eliminate those investments which are not in the nature of banking equipment. The building in which the bank is housed is not essentially banking equipment. The banking business is a credit business; primarily, it consists of the exchange of bank credit for commercial credit at a profit. Investment in a building does not strengthen the concern in its current credit relations. Many of the largest banking institutions do not own a building. The prime purpose of capitalization being to provide equipment with which to supply funds to the community in the form of demand credit, any use of capital to purchase a building must be considered as an extraneous investment not available for the support of the credit of a going concern. "Real estate" belongs to the same class of investments. This has been so often said that it has become axiomatic in commercial banking circles. The "margin" invested in the securities hypothecated with the Government is also not available to the business as a going concern. All of the above classes of assets are important as assets for final liquidation, but to a going concern they are purely voluntary and ornamental and bear much the same relation to the business of banking that the gilded dome on the Congressional Library does to the value of its literary stores within. Whether in contemplation of law this amounts to an impairment of capital or not, the fact remains that $3,397,053 of capital invested in this way has weakened the banks of Iowa as going concerns, and to that extent.

Another class of considerations attaches to the remaining classes of capital investments—those resources used to support the banking transactions themselves. Assuming that the banks had made return of redemption equipment as above exhibited, the Comptroller as an agent of the Government should know whether this equipment is adapted to the use for which it is intended. The unencumbered

securities, for example, being intended for an invested reserve to strengthen the cash reserve held to support demand accounts (deposits outstanding), the question pertinent to this use is: "Are these securities immediately convertible by sale or hypothecation without loss of principal?" If, again, any of these are held as the result of underwriting, this fact would suggest that a portion of the bank's capital was being employed in business other than banking and there would be an impairment in use if not in valuation. By some such classification facility would be given to many other official inquiries directed toward the protection of the people against impairment of the capital resources needed by a going banking concern.

A Point of Control not Adequately Covered by the National Bank Act.

While the National Bank Act is very specific as to the powers of control directed against the "impairment of capital" there is another element of banking strength or weakness quite as important that has been neglected, viz.: the protection of the customer against overburdening the equipment used. Judgment as to safety must rest not alone as to the absolute strength of material used in construction and equipment, but this having been determined it must then be compared with the weight or strain to be supported. To be more concrete, every facility is given to such inquiry as the Comptroller may make to protect the capital put into the business against deterioration, but almost no provision is made for inquiry as to whether the credit burden imposed by the bank officers on this equipment in the prosecution of the business is greater than it can safely bear. There is no provision made for correlation of capital equipment with the credit liabilities incurred in the course of the banking business. These obligations must be met on demand, and safety requires that they should be met by capitalization. This is the essential difference between what has been known as wild-cat banking and sound banking as contemplated in the National Bank Act. Banking activities are represented in its current assets acquired and the current liabilities incurred in banking operation. To concretely exhibit this class of financial results, reference will again be made to the summary for the State of Iowa above used in the statement of capital accounts:

ACCOUNTS REPRESENTING BANKING OPERATIONS.

Current Liabilities—Incurred in Banking Operations.

I.	Due to Banks and Bankers:		
	(1) Due to National Banks	$2,362,481	
	(2) Due to State Banks	4,257,426	
	(3) Due to Trust Companies, etc	3,258,966	
	(4) Due to Reserve Agents	18,377	
			$9,897,250
II.	Commercial Credit Accounts:		
	(1) Individual Deposits	$58,606,777	
	(2) Deposits of U. S. Disbursing Officers	42,586	
			58,649,363
III.	Miscellaneous:		
	(1) Dividends Unpaid		12,467
	Total Current Liabilities		$68,559,080

Current Assets—Acquired in the Course of Banking Operations.

I.	Due from Banks and Bankers:		
	(1) Due from National Banks	$2,698,877	
	(2) Due from State Banks	1,058,729	
	(3) Balance due from Reserve Agents	1,483,918	
	(4) Clearing House Exchanges	141,352	
			$5,382,876
II.	Commercial Assets:		
	(1) Loans and Discount	$62,159,426	
	(2) Overdrafts	1,121,025	
	Total	$63,280,451	
	Less Notes rediscounted	105,267	
	Net Commercial Assets		63,175,184
III.	Miscellaneous:		
	(1) Revenue Stamps		1,020
	Total Current Assets		$68,559,080

From the two summaries exhibited (the one of "capital accounts" and the other of "banking transactions") it appears that by means of a capital investment of $20,501,114 a banking business of $68,559,080 was carried on. With these results in mind let us determine, in so far as we may from the data in hand, what strain

was brought on capital equipment. In the first place, on what part of the equipment does the banking strain come? As before observed it is at once apparent that no part of the credit strain falls on the first three classes of equipment enumerated, viz.: (1) "Banking house and fixtures." (2) "Real estate," and (3) "Margins." From the point of view of the demands of commercial banking these are purely a gratuitous use of capital. Ownership of a house and furnishings is unnecessary—this paraphernalia may be leased and the rent charged to current expenses, and when a building is owned it is in the nature of a real estate investment; "real estate" owned is an incumbrance on banking capital and not banking equipment; the "margins" invested in bonds used as collaterals for notes and deposits are incidental to the system devised by the Government to strengthen its own credit and as such are not banking equipment—they are a further incumbrance on banking capital.

The equipment necessary to banking transactions is the "cash reserves," or "such invested capital reserves as may be readily converted into cash" and which may be used to meet demands on outstanding credit accounts without curtailing commercial accommodation. As a means of carrying on a business which consists in the exchange of bank "credit accounts" for "income-producing assets in the nature of commercial credit," the bank must establish and maintain a reputation for meeting its credit accounts on demand. The only way that this may be done with safety to its customers is by having capital resources in the form of "cash" when demands are made. The real test of banking strength, therefore, is to be found (1) in the "cash" on hand; (2) in "exchange balances;" and (3) in "unincumbered securities" and "other capital investments" readily convertible into cash. Again assuming the valuation of these capital assets to be conservative, the strength of banking equipment of the State of Iowa by this method of analysis, at the time stated, was $17,104,061.

But a comparison of strength of equipment with the credit strain upon it must be arrived at by bringing the two results together. The total demand obligations for the payment of money were in round numbers $68,559,080. That is, the equipment of cash and immediately convertible capital resources (irrespective of

the commercial assets) being $17,500,000, and the total amount of demand credit to be supported $68,500,000 the inverted pyramid would be $68,500,000 \ 17,500,000. But in getting at the amount of the strain that will fall on the capital resources this gross amount must be reduced. Eliminating by set-off the current institutional assets and liabilities the relation of credit outstanding to capital assets employed in a strictly banking business would be $63,200,000 \ 17,500,000. In other words, $17,500,000 invested in banking equipment have enabled the banks of Iowa to purchase about $63,200,000 of interest-bearing commercial assets, by means of about $63,200,000 of their own credit accounts supported by this equipment. The corporations have a gross income about four times as large, through banking operation, as they would have by direct investment of their capital in commercial paper; and they have furnished to the community credit funds which do the work of money equal to about four times the amount of money that would have been in circulation by direct investment.

The purpose of control is to make such a business safe and the differential of safety must be drawn from experience, leaving an adequate margin of protection to the public against contraction of the circulating medium as well as protecting customers against immediate loss from non-payment. The need for a better correlation of capital resources with banking operations carried on, may appear the more vividly by comparison of the several classes of banks reported:

COMPARATIVE RESULTS OF ANALYSIS OF DIFFERENT CLASSES OF NATIONAL BANKS, SEPTEMBER 9, 1903—STATED IN MILLIONS OF DOLLARS.

Classes of Items	All National Banks of the United States	Banks of Reserve Cities	Banks of St. Louis	Banks of Chicago	Banks of New York	Banks of Central Reserve Cities
CAPITAL RESOURCES						
Banking House, etc.	$107	$ 25	$ 1.2	$ 1.3	$ 20	$ 23
Real Estate, etc	21	4	.1	.2	3	3
"Margins"	58	13	1.0	.6	15	17
Cash Reserves	$606	$147	$18.4	$42.7	$177	$248
Exchange Accounts (?)	40	16	4.5	.....	.....	.....
Securities	478	116	3.3	.....	.....	.....
Other Direct Capital Investments	.....	.....	2.4	.....	.....	.....
Total Capitalization*	$1,310	$321	$30.9	$44.8	$215	$291
CURRENT ASSETS						
Cash	.....	.....	.....	$ 5.5	$ 32	$ 27
Securities	.....	.....	.....	11.9	79	95
Due from Banks	$ 930	$ 321	$ 12.1	70.0	144	233
Commercial Assets	3,462	893	89.6	181.5	632	902
Total Current Assets and Liabilities	$4,392	$1,214	$101.7	$268.9	$887	$1,257
CURRENT LIABILITIES						
Due to Banks	$1,226	$460	$54.9	$143.3	$436	$634
Commercial Credit Accounts	3,166	754	46.8	125.6	451	623

*Capital Stock, Surplus and Undivided Profit.

In so far as may be determined from the bank returns made on the form now used, the foregoing summary shows the disposition of capital invested in the banking business in the various classes of banks represented. From this it would appear that, while in a single agricultural State like Iowa the banks, as a whole, by their own capitalization have provided the equipment used to support their outstanding credit, taking all of the banks of the United States, they have provided no capital for direct investment in "loans to reserve agents," and aside from the "cash reserves" have provided scarcely enough for adequate "exchange accounts." The banks in reserve cities are in about the same relative condition as those of the country at large. The banks of the central reserve cities, however, have not sufficient capital to provide themselves with the current "cash reserves" used in the business, and which are required of them by statute. At the date of making the report the amount of "cash" provided through capitalization by this class of banks

was only 24.2 per cent. of the net banking liabilities; the balance of the amount of "cash" on hand to support outstanding accounts, and to meet the 25 per cent. legal requirement had been borrowed.

Judgment of Bankers as to whether Present Capitalization is Adequate.

If, on the other hand, we take the judgment of bankers as to what equipment is necessary to the safe conduct of their business, another result will be obtained. For this purpose it may be assumed that a banker will keep no more "cash" on hand than safety to his business requires; if he does he is violating good business judgment. The same may be said of "exchange accounts" and of investments made in low income-producing assets from which "cash" may be realized by quick turns to support credit accounts. Assuming further that the principle is a sound one, that such assets as are permanently employed, or are continuously needed in the business, should be procured by direct investment of capital (*i. e.*, that a business concern, especially a bank, should not obtain its equipment on a "floating debt"), then the inadequacy of capital measured by the standards set by bankers themselves increases as we proceed from periphery of the National Banking system towards this center. To exhibit this in tabular form, the result of failure of the law to require such control as will prevent the overtaxing of capital resources, and such as will insure that our commercial banks do business on their own capital, would appear something as follows:

COMPARATIVE STATEMENT OF EQUIPMENT ACTUALLY USED BY THE SEVERAL CLASSES OF BANKS—STATED IN MILLIONS OF DOLLARS.

Classes of Capital Items	Iowa	Country Banks	United States	Reserve Cities	Central Reserve Cities	New York
CHARGES AGAINST CAPITAL						
Banking House, Real Estate, and Margins	$ 3.4	$ 101	$ 186	$ 42	$ 43	$ 38
REDEMPTION EQUIPMENT USED						
Cash Reserves	5.5	183	605	147	275	208
Exchange Account	2.1	120	187	46	21	14
Securities	2.4	260	470	116	94	79
Loans to Reserve Agents	7.1	153	267	114	.....	.....
Total	$20.5	$817	$1,715	$465	$433	$339
Capitalization	$20.5	$698	$1,310	$321	$291	$215
Floating Debt	.....	119	405	144	142	124
Percentage of Floating Debt	.....	17%	31%	44%	49%	58%

In the above, question is raised as to several classes of items. Without specific inquiry in the form of report required as to the amount which a bank carries for "exchange accounts," this must be approximated. The approximation here given, however, is a deduction from "Loans to Reserve Agents" (another account which is carried as an invested reserve for the purpose of supporting the cash reserve) and, therefore, one which should be capitalized. As to the "securities held," in so far as they are not held as reserve equipment, they are not a banking resource and like "real estate" are in the nature of an encumbrance on banking capital. Such assets must be either for support to bank credit or for direct investment. In either case the bank should not buy bonds on credit. Taking the charges against capital as they stand and the redemption equipment actually used, we find that for the United States, in the judgment of bankers themselves as reflected in practice, the banks should have provided $405,000,000 more of capital to support their business. That is, to properly support $4,392,000,000 of credit used in the course of bank operations to purchase $4,392,000,000 of income producing assets, the equipment which was actually used should have been provided by the proprietors of the business. Such a provision would require an increase of 31 per cent. in total bank capitalization. But further inquiry would show that all but 9 per cent. of this gross amount would be required of the reserve cities, and that a very large portion of the increase is needed in the city of New York.

Inadequacy of the Reserve Requirements.

Again I wish to affirm the position before taken—that this is not proposed as a true method of analysis to get at the relation of intensity of credit strain to equipment used. Attention is directed to the fact only that such an element should be taken into account in reports, the purpose of which is to furnish the data for official control. Further, it is suggested that no provision is made in the present form of report for ascertaining these data; and only one provision of law is made to protect the public against any overtaxing of capital equipment. This one provision referred to is the clause which imposes a minimum limit in money reserve to be

kept. Drawing on experience and on the expression of banking opinion in legal form in State practice before adoption of the National Bank Act, the minimum money reserve to be kept by country banks was set at 15 per cent. of credit accounts outstanding, and for reserve city banks, 25 per cent. This clause was modified, however, under pressure from the banks, so that in estimating the amount of cash on hand three-fifths of the 15 per cent. money reserve of country banks might consist of loans to reserve city banks, and one-half of the money reserve required of reserve city banks might consist of loans to central reserve city banks.

This limitation imposed does, in fact, operate to prevent some of the least provident bankers from bringing their houses down on the heads of customers, and precipitating a panic in the business community. Nevertheless, the provision is entirely inadequate to prevent an overtaxing of equipment. To illustrate one of the methods used for complying with the law and at the same time for carrying a load that keeps the institution on the verge of credit collapse: From the published reports it appears that a number of banks have individual deposits outstanding amounting to from ten to twelve times their capitalization. Some of these banks continuously carry a cash fund larger than their capital stock, surplus and undivided profits. Where did they obtain this money? Undoubtedly they borrowed it. In several instances, only about one-third of the equipment constantly used by these banks is provided by means of capitalization; the balance is obtained on demand loans. Imagine another enterprise being financed in this manner!

The Present Condition not the Fault of the Banker but of the Bank Act.

I am not finding fault with a bank for doing business in this way. If a banker finds that he may obtain capital from others with which to do business and that, when a sudden demand comes for payment, he can force his commercial customers to find the means necessary to replace the temporary foundations withdrawn, if by such methods the banker may be able to keep his own house from falling on the heads of managers and stockholders, he may be exonerated on the principle that he has availed himself of a business

advantage which has brought a large return in profits. But the purpose of control is not to protect the bank. From the point of view of the purpose of public control we ask the question. "What is the result of this character of banking to the commercial community?" As a national system this is simply another form of wild-cat banking and it is in this very practice that we find much of the trouble that heretofore has been ascribed to inelasticity of the currency. The prime fault is in a law which permits bank capitalization inadequate to maintain the volume of bank credit offered to the community with which to do business and of which customers have availed themselves. This being suddenly withdrawn to protect the bank from its own weakness, the community is left in a crippled condition to shift for itself.

One of the purposes of control should be to secure a better co-ordination between the volume of credit accounts sold and capital equipment provided as a means of support; to this end the National Banking Act needs revision. But having been revised so as to give the Comptroller power to exercise supervision to prevent the overstraining as well as the "impairment" of capital equipment, the present power to compel reports is sufficient to make this supervision effective. One of the two principal purposes of the Bank Act is to guard the integrity of our financial system and to protect the public against loss on account of inadequate capitalization. To effect the full measure of good intended by the Act, to vouchsafe a system of control which will secure "sound banking" as well as "sound currency," there should be added to the present powers which are intended to protect against an impairment of capital, inquisitory powers directed against an overloading of equipment. As a means of executing this authority, classified schedules should be devised which will furnish the information necessary to intelligent official discretion, and classified financial statements of results should be published, that the public may the more intelligently deal with the banks.

State Regulation of Insurance

By L. G. Fouse, Esq., President of the Fidelity Mutual Life Insurance Company

STATE REGULATION OF INSURANCE

By L. G. Fouse
President of the Fidelity Mutual Life Insurance Company of Philadelphia

Origin.—The right of the State to regulate corporations created by it is concededly an attribute of State sovereignty. Corporations to whom sacred and important trusts are committed may be properly required, therefore, to make a full exhibit of their condition to a duly constituted authority of the State which is responsible for their existence.

Experience has shown that in the absence of any State regulation, franchises granted by the State have been shamefully abused, and that because of the lack of authentic information it is practically impossible for private judgment, even the best, to be exercised intelligently. "Get rich quick" concerns have been incorporated and men of prominence have appeared as officials, thus combining the legal sanction of the State with the reputations of individuals, which have had the effect of inspiring in some degree public confidence in alluring, but impossible, schemes.

It was because of this condition affecting moneyed corporations, that steps were taken by some of the States as far back as the year 1828, to require them to make report to State officials. While State regulation of banks has been found necessary, and has placed the banking business on comparatively safe grounds, it is even more necessary in the matter of insurance, because an insurance contract—and this is especially true of life insurance—may run for a long time, and generally does not mature until the death of the party who made it. It is right, therefore, that the State by its laws and their enforcement should protect both the maker and the beneficiaries under contracts of insurance. And it is just as important to protect the insurer by law against imposition, collusion and fraud, as it is to protect the insured or assured.

Aside from the fact that under an insurance contract the happening of the contingency insured against may occur far in the future, is the possibility of an insurance company's continuing to pay

its current claims with remarkable promptness, although it may be hopelessly insolvent. The solvency of an insurance company can only be determined by comparing available assets with the present worth of its future obligations, together with the accrued liabilities. The determination of the present worth of its obligations is a technical matter which few individuals can accomplish for themselves. It requires skill and expert knowledge, which under State regulation are provided by the State.

The abuse of the franchise privilege before State regulation of insurance existed was so marked that a special commission in New York State, on application of the companies themselves, was appointed, and in December, 1856, reported its conclusion as follows:

"The only sure method, without serious embarrassment to the companies, we can discover to prevent the organization of fraudulent institutions, and at the same time give the public an opportunity to know at all times the condition of the companies, is to have a system, sanctioned by law, requiring a rigid supervision on the part of the State, which can be accomplished by annual investigation and public registry of their securities," and, "they should be properly guarded and protected in their legitimate business."

The origin of State supervision may, therefore, be attributed to franchise abuse and the ruinous practices which obtained theretofore, Massachusetts being the first to establish an Insurance Department in 1855, New York following in 1859.

History.—Regulation of insurance by the State as it now exists is of comparatively recent origin. The most rigid regulation recorded in history is that by the German Empire. There is practically no freedom of action on the part of the company management, and little or no provision is made for changed conditions. That which properly belongs to by-laws for the government of the company has been incorporated into the statute.

The other extreme, of liberality, will be found in Great Britain, which country may be said to be the mother of insurance. The keynote of regulation in Great Britain is publicity. Companies are required to file regular, carefully prepared schedules, by which any person of ordinary knowledge may arrive at an intelligent conclusion as to the financial standing of the companies. Great

Britain, however, has always exercised a paternal interest in insurance.

By reason of complaints which had been made to the Government, a Parliamentary Committee was appointed as early as 1720, which was the first Parliamentary Committee on Insurance, but many such committees were subsequently appointed. A report of the Parliamentary Committee which sat in 1844 seems to have been the basis of the weeding-out process which followed. They classified the so-called "bubble companies" under three heads:—

First. Those which, being faulty in their nature, inasmuch as they are founded on unsound calculations, *cannot succeed by any possibility.*

Second. Those which, let their objects be good or bad, are so ill-constituted as to render it *probable* that the miscarriages or failures incident to mismanagement will attend them; and

Third. Those which are faulty, or fraudulent in their object, being started for no other purpose than to create shares for the purpose of jobbing in them, or to create, under pretense of carrying on a legitimate business, the opportunity and means of raising funds, to be shared by the adventurers who start the company.

A registry law was passed, to become operative September, 1844, which was the substantial beginning of insurance legislation, and which in Britain seems to have attained its perfection by the Act of 1870, and amendments thereto.

Britain has upwards of twenty insurance institutes, and several actuarial societies, the oldest of which, the British Institute, was founded in the year 1848. Since the weeding out of unreliable companies between the years 1844 and 1850, the method of regulation in Britain, which is, as already stated, mainly by publicity, has produced very satisfactory results. This is in a great measure due to the development of the scientific aspect of the business. All the world is in a great degree dependent on Britain for scientific treatises on the subject of insurance.

It is only in recent years that organized attention has been given in America to the scientific aspect of the insurance business. The Actuarial Society of America was founded in 1889.

State regulation in the United States occupies a mean between

the hard and fast lines of the German Empire and the liberality and latitude vouchedsafe by Great Britain.

As already stated, Massachusetts created an Insurance Department in 1855, and New York in 1859, but Massachusetts did not value policy liabilities by any standard until 1861, and New York did not until 1868. Other States followed, Pennsylvania in 1873, until now all the principal States have not only undertaken to regulate the business by legislation, but have created Departments charged with the execution of the laws in relation to insurance. Every State has enacted laws to regulate the business.

Such laws specify what is necessary to secure a charter in the home State, or a license from another State by way of payment of fees, deposit, execution and filing of papers, and what must be done periodically in order to continue business. The requirements of one State frequently conflict with the requirements of another State. With the view of endeavoring to reconcile such conflicts, and to secure a greater degree of uniformity and harmony in State regulation of insurance, the Insurance Commissioners have assembled in annual convention since 1871 for the interchange of views and opinions.

Abuse of Power of Regulation.—Aside from the taxation abuse to which State regulation has given rise, and which will be discussed separately, there are, notwithstanding the many good points, abuses and objections in evidence.

Insurance, in order to get the benefit of the law of average, must of necessity be extended over a wide field. Practice, as well as the natural conditions, has made it an interstate business.

The Legislatures of the several States meet either annually or biennially, and at every session bills are introduced, either willfully or ignorantly, which, if enacted into a law, would seriously embarrass if not entirely destroy the business which has become an essential part of our progress and civilization. This necessitates vigilance, not only on the part of the State officials to whom the supervision has been entrusted, but on the part of the companies, and involves them in no inconsiderable expense.

Notwithstanding such vigilance, laws are frequently enacted in one State which are directly opposed to the laws of another State, and yet the companies already licensed and with business established

in the several States are expected to comply with the conflicting laws, and penalties are imposed if they do not comply. While there has been a marked improvement in this respect through the operation and work of the National Convention of Insurance Commissioners, under the theory and practice of exclusive State supervision it never can be as it should be for the best interests of the people.

The State office of Supervisor of Insurance, whether elective or appointive, is not always filled by one whose experience, training and knowledge fit him for the position, but is liable to be filled by one as a reward for political service, without reference to any special fitness for the discharge of the duties required of him. It is true that the office in the principal States, as a rule, has been filled by men of eminent fitness. Nevertheless, there are many instances, if the facts were generally and publicly known, that would seriously reflect upon the entire system of State supervision.

A little knowledge is admittedly dangerous. A number of the supervisors, by not restraining themselves in office until they have mastered the intricacies of the business, have taken positions which they could not maintain, and which were exceedingly annoying as well as expensive to the companies. There have been supervisors who constituted themselves judges of the law and the facts, and unundertook to rule arbitrarily without taking into account equities and results.

As a rule, the officers of States to whom supervision is entrusted are amenable to the courts, and, therefore, any radical departure from sound doctrine and good practice may be checked or corrected by appeal to the courts. A few States, however, notably Massachusetts, leave everything relating to insurance to the opinion and discretion of the Commissioner. Fortunately, the office has been filled by men who have, with a few exceptions, taken no undue advantage of the power conferred on them by law. In view of the magnitude of the interests involved and the uncertainty as to the capability and fitness of the supervisor, no State should enact laws making the opinion and discretion of the supervisor or commissioner final and conclusive. Just as the individual under civic liberty has the right to be adjudged innocent or guilty by a judicial tribunal

so an insurance company should not be deprived of an appeal to such a tribunal in the case of a controversy with a State supervisor.

The law of comity obtains between most of the States, so that the certificate of the supervisor of the home State is accepted, under the provisions of the laws of reciprocity usually incorporated in the statutes of the different States, by the Supervisors in other States. There are, however, a number of States that have no local companies, and reciprocity means little or nothing to the supervisors of such States. Hence, it is not unusual for them to attempt to make independent investigations and valuations at the expense of companies.

Some years ago, junketing trips at the expense of the companies were made by the representatives of some of the State Insurance Departments. The examinations made were farcical, the examiners being incompetent, not skilled or trained, and the motive was self-aggrandizement, instead of benefit to the policy-holders. However, the exposures of two or three such instances have had a salutary effect, and there is less of it now than heretofore. Nevertheless, the opportunity for the abuse still exists.

Notwithstanding the efforts made since 1871 to get the States to adopt a uniform blank upon which to make returns, there are still a number of States that have not fallen in line, which multiplies labor and increases the expense of the companies. Under the laws of most of the States, the supervisor is given discretion in submitting questions to the companies. When forty-eight supervisors exercise such discretion, it can be readily understood how difficult it is to limit the questions submitted in the blanks to those approved by the National Convention of Insurance Commissioners, which is a voluntary body and has no legal existence. It is nothing unusual, especially for inexperienced supervisors, to introduce some new question, troublesome and expensive to the companies, but of no practical value whatever.

Some of the States have discriminated against insurance companies by imposing a penalty on companies in case they do not succeed in defending a claim believed by the management to be unjust. Such penalty in the State of Texas amounts to 12 per cent. of the claim "together with all reasonable attorneys' fees." In a number of the States, companies are denied the right of trans-

ferring cases to the United States Courts. In others, there are restrictions and conditions which practically amount to a denial of the right to appeal to the highest courts.

In a word, abuse of State regulation of insurance is mainly due to the impossibility of unifying and controlling the Legislatures and supervisors of the forty-eight distinct sovereignties comprising the Union.

Benefits and Advantage.—It is safe to say that the legitimate insurance interests of this country would not be willing to give up State regulation and supervision except for something manifestly better. Supervision in the light of legislative regulation has been upon the whole a success. The fault lies with legislative regulation rather than with supervision. The tendency, however, in both legislative regulation and supervision has been in the line of improvement. Largely through the influence of supervision, the business of insurance has been properly classified. While there are yet a few companies acting under old charters, which combine businesses that had better be separated, the general rule of separation of fire, life, casualty, health, etc., obtains.

Safeguards have been adopted for the admission to the several States of only such companies as can show their ability to fulfill their contract obligations. Before a company can be admitted to do business, it must file a certified copy of its charter, an official certificate showing that it is legally authorized to do business in its home State, that it has a surplus over and above all liabilities, and the ability to fulfill its obligations, that it has securities on deposit with the financial officer of its home State worth at least $100,000, and in case of different lines of business, a larger deposit must be made. It must file its annual statement showing income, disbursements, list of investments, etc.; furnish a certification of valuation of its policy liabilities from the insurance official of its own State, appoint an attorney upon whom legal process may be served, furnish a list of its agents within the State to whom license must be granted by the State before they are authorized to do business, and must allow at the expense of the company an examination of its affairs whenever deemed expedient by the insurance officer of the State. It must also file official copies of all its policy forms and of documents referred to therein or made a part thereof; and there are a number

of other requirements which must be met. These are usually in the line of good business and in the interest of the insuring public.

After a company is regularly admitted, it must comply with the laws of the State, which usually protect the insured against forfeiture, against unreasonable delay in the payment of claims, and require a company to make annually a full exhibit of its affairs, which by most of the States is published in the report of the Insurance Department.

An effective system of supervision economically administered has become an absolute necessity to the business of insurance.

Taxation Abuse.—All the abuses of State regulation already mentioned pale into insignificance before the abuse of taxation. Life insurance does not create wealth, it merely distributes and sustains, and is designed to reduce misfortune and pauperism and encourage thrift and stimulate unselfishness and self-dependence. Lawmakers, however, because of large accumulations incident to the feature of distribution, feel that these are easy to get at, and, therefore, should be made subject to taxation. The equities and justness have evidently not received due and proper consideration. If they had, it would be found that the tax is paid by the policy-holders themselves, who have already paid taxes in some other form, and it is, therefore, multiplying taxation upon them.

On December 17, 1897, I addressed the American Academy of Political and Social Science, and presented the result of an investigation I had caused to be made in the Philadelphia and Montgomery County almshouses. The census of 1243 paupers with reference to life insurance was taken. Less than 10 per cent. had ever contributed to life insurance, and then only under industrial policies, which generally afford merely a burial fund, and only three were found that had ever been beneficiaries of life insurance. The investigation clearly showed that life insurance is practically unknown to the pauper class, and yet fully 10 per cent. of the paupers had been tradesmen.

The work of the insurance agent is to solicit and encourage men during their productive years to make provision for their families in the event of their death and for themselves in old age, thus waging a constant warfare against pauperism and public dependency. For doing this, which is for the good of the individual and the legislative

organism of society, called the State, the latter imposes a penalty by a multiplication of taxes.

A contrary policy has been pursued in Great Britain ever since it was found through an investigation by a Royal Commission, appointed in 1832, that the life insurance and friendly society movements encouraged thrift, self-reliance, self-dependence, and reduced the poor rate, as shown by section 821 of their report, more than $10,000,000 annually. According to the terms of Section 54 of 16 and 17 Victoria, cap. 34, every policy-holder in a life and accident company, who may be liable for income tax, is entitled to deduct from his return of income to Government the premium or premiums paid by him under any policy or policies of insurance on the life of himself or his wife, to the extent of not more than one-sixth part of his whole income.

The policy pursued by the States in this country is, that while money deposited in building and loan associations and in savings banks, where it is always available to the depositor, shall be tax free, money deposited with an insurance company, designed to protect dependents in the event of the death of the insured, and not available to the insured, thus preventing pauperism among such dependents, must be taxed not only once but several times, indicated as follows:

1st. Fees to the Insurance Department, including usually a liberal license fee; 2d, license fees of agents; 3d, tax on gross premiums of usually 2 per cent.; 4th, franchise tax or a tax on investments; 5th, augmented frequently by city, county or municipal tax or license fees.

In 1903 it cost the policy-holders in the United States holding policies in level-premium companies $8,500,000 for taxes, or about six per cent. over and above all direct taxation on the actual property in their possession, of the whole amount paid for death claims and matured endowments. In 1903 the Fidelity Mutual Life Insurance Company paid its officers $39,664.14 to manage its business, and paid to the States $69,685.21 in tax and fees for the right to do business.

There is neither uniformity of rate nor method in imposing tax by States. One State will tax reserves, another gross premiums, etc., in addition to the license fees. The latest innovation was made by the State of Nebraska taxing the cash surrender values of

policies, which, however, being a direct tax, will become known to the insured, and probably will be soon repealed.

I admit that the State which gives existence to a corporation has a right to expect a reasonable revenue from it, but submit that it is not good public policy, and is contrary to the spirit of the State "which aims to secure the prevalence of justice by self-imposed laws," to multiply the taxes upon one class of its citizens. It should be remembered that "the great battles for freedom from the earliest times have been fought out on the questions of taxation." State legislation, under the cover of taxation, has been trespassing step by step upon the rights of a class of citizens who have agreed among themselves to make provision for their dependents, until such rights, if such trespassing continues, will be seriously jeopardized.

Insurance corporations should be taxed as all others, on the actual property in their possession, and in addition to this a tax might be imposed to cover the cost of supervision. The cost of supervision, *which should include examination of the companies* (this inspection should be made at the expense of the State and not of the companies), would not exceed 10 per cent. of the amount now collected for taxes and fees.

State Regulation of Insurance under National Supervision.—While it would be impracticable and in a manner impossible to dispense with State regulation, I am convinced that it would be to the best interests of the insuring public and the business of insurance to place State regulation under national supervision by Act of Congress.

Before the adoption of the Constitution, it was attempted to control trade under the Articles of Confederation by Legislatures of thirteen distinct sovereignties. Gen. Washington said: "It behooves us to establish just principles, and this cannot, any more than other matters of national concern, be done by thirteen heads differently constructed and organized." Discrimination, confusion and discord among different parts of the Confederacy were in evidence. One of the reforms demanded was introduced and adopted by the Constitutional Convention, and is found in Sec. 8 of Article I, namely: "The Congress shall have the power to regulate commerce with foreign nations, and among the several States, and with the Indian tribes."

The creation of a national bureau of insurance under this sec-

tion would be as simple, logical and conclusive as was the creation of the Department of Commerce. This subject has been discussed for the last thirty years. The opponents of national supervision, and those not informed, refer to the case of Paul *vs.* the State of Virginia, decided by the Supreme Court of the United States in 1869. The question before the court was as to whether Samuel B. Paul violated the Virginia law in representing a company not licensed by the State. Judge Field delivered the opinion of the Court and said: 'Issuing a policy of insurance is not a transaction of commerce. These contracts are not articles of commerce in any proper meaning of the word."

A careful analysis of the case discloses the fact that the court's statement touching the relation of a policy of insurance to commerce is not entitled to any greater weight than that which ordinarily attaches to what the courts call "*obiter dictum*," and is not, therefore, a precedent for the Supreme Court or for any other court.

As to whether or not insurance is commerce was not germane to and had no bearing whatever upon the case. The decision would have been precisely the same whether Congress has or has not the power to regulate commerce among the States, and whether insurance is or is not commerce. The States have the undoubted right, in the absence of an act of Congress, to regulate the business and prescribe the terms under which foreign corporations may transact business within their borders.

If there had been a Congressional act in force in 1869 declaring insurance to be commerce, then the question would have turned on the constitutionality of such Congressional act, and Judge Field's statement would not have been a mere dictum in effect, but a positive expression of the law. "Dicta are judicial opinions expressed by the judges on points that do not necessarily arise in the case. Dicta are regarded as of little authority on account of the manner in which they are delivered, it frequently happening that they are given without much reflection, at the bar, without previous examination." In the case of Frants *vs.* Brown, 17 Serg. and Rawle, 292, Judge Huston said: "I protest against any person considering such obiter dicta as my deliberate opinion." Applying this reasoning to the Paul case, and considering the little influence or weight attaching to *obiter dicta* it is evident that that case is no authority on the

question as to whether or not insurance is commerce, and the question is yet an open one, without any judicial conclusion one way or the other.

The next point for consideration is, should Congress declare insurance to be commerce. If so, then it undoubtedly becomes a subject for national supervision, but not until it has been so declared.

The Supreme Court in the case of Debs held that "the Government of the United States is one having jurisdiction over every foot of soil within its territory, and acting directly upon each citizen." In considering what was meant by commerce in Section 8 of Article I of the Constitution of the United States, recourse must be had to the generally accepted meaning of the word. Some give it the narrow construction of trading in merchandise. The discord and friction which obtained between the distinct sovereignties under the Articles of Confederation, led such men as Alexander Hamilton, Thomas Paine, Noah Webster, John Jay, James Madison, and Gen. Washington to advocate the framing of a National Constitution which in certain matters should subordinate the States to the Nation.

Alexander Hamilton, in a letter September 3, 1780, to James Duane, contended that "Congress should have complete sovereignty in all that relates to war, peace, trade, finance, foreign affairs, armies, etc." He also, in speaking of the interference and unneighborly relations of States, urged that the "injurious impediments to the *intercourse* between the different parts of the Confederacy" be constrained by National control. Sec. 8 of Article I of the Constitution as adopted accomplishes this.

Commerce practically comprehends trade and finance, and includes insurance. According to the American and English Encyclopædia of Law, vol. 6, p. 217, the term "commerce" includes "all commercial intercourse."

"The word 'commerce,' as used in the Constitution, includes all its ramifications, and every feature or form which it may assume." Ex. p. Crandall, 1 Nev. 312.

"Commerce among the States, within the exclusive regulating power of Congress, consists of intercourse and traffic between their citizens." *In re* Green, 52 Fed. 113.

"By the term commerce is meant not traffic only, but every species of commercial intercourse." State *vs.* Delaware, etc., R. Co., 30 N. J. L. 478.

"Commerce signifies any reciprocal agreement between two persons, by which one delivers to another a thing which the latter accepts, and for which he pays a consideration." Crow *vs.* State, 14 Mo. 247.

"Commerce is undoubtedly traffic, but it is something more; it is intercourse." Gibbon *vs.* Ogden, 9 Wheat. (U. S.) 189

"Commerce is defined to be an exchange of commodities, but this definition does not convey the full meaning of the term. It includes intercourse and navigation." Henderson *vs.* New York, 92 U S 259.

"Commerce is a term of the largest import. It comprehends intercourse for the purposes of trade in any and all its forms." Welton *vs.* Missouri, 91 U. S. 280; Campbell *vs.* Chicago, etc., R. Co., 86 Iowa 589.

"The definition given as used in the Constitution of the United States includes intercourse." Fuller *vs.* Chicago, etc., R. Co., 31 Iowa 207.

"Commerce signifies any reciprocal agreements between two persons." Bouvier's Law Dictionary, 280.

All authorities seem to agree that commerce comprehends interchange and intercourse in pursuance of agreements between parties. A contract of life insurance is unquestionably a reciprocal agreement between two parties and is a thing of value. In England, the supervision of insurance is in the hands of the Board of Trade; in France, it is looked after by the Minister of Commerce; in Norway, permit must be obtained from the Commercial Registrar; in Austria, it is subject to the Tribunal of Commerce.

Is Insurance In Reality Commerce?—Who would have the temerity to assert seriously to-day, and under existing conditions, that insurance is not commerce, that the most colossal and important industry of modern life, involving more money and affecting more people than all the railroads, banks, trust companies and savings institutions combined, extending into every nook and corner of the land, and the subject of sale, barter and pledge wherever business activity exists, is not commerce, especially in contemplation of the Constitution?

Indeed, it is confidently believed that Judge Field himself, if he were alive to-day, in view of the enormous aggregations of capital, the gigantic combinations of all sorts, the revolutionary and progressive methods of business, the augmented necessities incident thereto, the extended powers of the Federal Government under judicial construction, and above all, in view of the prodigiousness of insurance, its universal ramifications, its many uses, trade, commercial and family, and the vast money interests involved, would be one of the first to declare that it is, in the very highest sense, commerce, and conducted as it is to-day, is pre-eminently interstate commerce and subject to Federal supervision and regulation under appropriate Congressional legislation.

Furthermore, the question as to whether insurance is commerce

or not, is not an abstract question of law. It is rather a question of fact and to be determined as other questions of fact are determined. And it is respectfully submitted that intelligent business men are, to say the least, quite as competent to determine the question as judges and lawyers. If, therefore, Congress should declare that insurance is commerce, the question would be thus determined by the greatest and ablest legislative body in the world, whose impartial determination of any question of fact deserves universal acceptation as just and proper. The judges of the Supreme Court would undoubtedly accept Congressional determination of the fact as conclusive, even if they should personally entertain a different view, just as they accept the verdicts of juries. But even in the absence of a declaration to that effect by Congress, if the question should be fairly and squarely presented to the Supreme Court either as a question of law, or fact, or both, the Court would undoubtedly hold that insurance is commerce, in view of the reasons heretofore indicated.

The character of a Federal statute regulating interstate insurance, the privileges and limitations under it, its requirements, the powers and duties of the officials under it, and in fact, the whole scope of such a statute, would require on the part of those who drafted such a law the greatest care and experience.

Congress Inferentially Declares Insurance to be Commerce.—Congress, in establishing the Bureau of Corporations of the Department of Commerce and Labor, authorized such Bureau to gather, compile, publish and supply useful information concerning "such corporations doing business within the limits of the United States as shall engage in interstate commerce, or in commerce between the United States and any foreign country, INCLUDING CORPORATIONS ENGAGED IN INSURANCE." This is the first legislative or judicial expression under Federal authority to the effect that corporations engaged in insurance come under the head of "commerce." The natural sequence of the gathering and disseminating of information by the Bureau of Corporations will be the establishment of national supervision of insurance.

State regulation would, with the exception of the powers and authority delegated by national supervision, be limited to the regulation within its own borders of the corporations to which the State

gives existence. State legislative regulation would virtually be at an end, as it should be; but State supervision could no doubt be subordinated to and be the representative of national supervision. If a State maintains a bureau, then there is no reason why records, so far as they relate to companies doing business in such State, should not be furnished by the National to the State bureau for the information of the citizens of such State. The relationship of State regulation to national supervision will give rise to many important questions which require careful consideration.

Until Congress exercises the power conferred upon it by the Constitution to provide national supervision, the States will continue to exercise such right, because it is not forbidden, and because supervision is a necessity.

II. The Scope and Limits of Federal Anti-Trust Legislation

The Federal Power Over Trusts

By Honorable James M. Beck, Late Assistant Attorney-General of the United States

THE FEDERAL POWER OVER TRUSTS

By Hon. James M. Beck
Late Assistant Attorney-General of the United States

The last decade of the Nineteenth Century witnessed an extraordinary concentration of industries. For this economic phenomenon there were doubtless many and complex causes. The profound and underlying cause was unquestionably the centripetal influences of steam and electricity. These potent agencies, which have almost annihilated time and distance, have made it possible for the individual, and especially for collective groups of men, to conduct business operations over a much larger area than was ever heretofore possible. The natural result of such concentration should be the elimination of unnecessary waste, both in the matter of production and also in the nice adjustment of consumption to production. To this extent concentration is as inevitable a law in the business world as gravitation in the physical universe, and its force is so potent and irresistible that, if it conflict with either the statutory or constitutional law of organized government, the latter will sooner or later inevitably and peacefully give way. The trust problem is therefore not peculiar to the United States. The concentrating tendency of steam and lightning first manifested itself on a large scale in England, where scattered business enterprises of individuals were rapidly consolidated into industrial stock corporations, and later in Germany, where a similar movement was made to revise its general economic methods. The United States followed and did not lead an irresistible impulse in all civilized countries.

But the economic phenomenon which gave rise to the so-called trust problem had in our country some special causes. In part, it was due to the instinct of imitation. A group of young men of extraordinary business genius, perceiving the demoralization of the oil industry by reason of cut-throat competition, created by a gradual revolution the Standard Oil Trust. Its unprecedented success, and the enrichment beyond the dream of avarice of its

chief promoters, led men in other industries to attempt the formation of similar trusts, and when combinations of manufacturers were, so far as Federal laws are concerned, apparently legalized by the decision in the Sugar Trust suit, these amalgamations of business enterprises proceeded with startling rapidity and ever accelerating speed, until there were formed between 1890 and 1900 over four hundred large trusts, so-called, with a total nominal capital in excess of twenty billions of dollars.

The imitators of the Standard Oil Trust, however, forgot that it was far easier to create a monopoly in a product of limited production like oil than in others of general and almost unlimited production, and they further made the greater error of supposing that mere combination would insure prosperity. The Standard Oil Trust was at the beginning and remains to-day the most wonderful business organization for the sale of commodities in the world, and this is not merely due to combination, but to the fact that its managers are familiar with the work of the company and give to its management the advantage of exceptional ability and untiring industry. Their imitators, however, made the mistake of assuming that there was some magic in the mere fact of combination, and that when a practical monopoly was secured for the time being in any given industry, little remained, except to enjoy its fruits.

A third cause for the formation of trusts was the opportunity which modern corporate facilities gave for the flotation of corporate shares and consequent speculation therein. This facility to represent business values by pieces of paper gave a tempting opportunity to the promoter and the speculator, and combinations were formed, not for the purpose of eliminating waste in the production, transportation and sale of a commodity, but to float shares of stock and sell them to the public at artificial prices. To this cause must be attributed the greatest evils of the trusts. Overcapitalization, secret profits to the promoters, the declaration of unearned dividends, the purchase at excessive prices of material from insiders, and similar evils swiftly followed, and a very saturnalia of business fraud ensued, which arrested the industrial progress of the nation and produced a profound, although temporary, depression. Not one, but a hundred John Laws, sud-

denly attempted to create wealth by the liberal use of the printing press, and the South Sea Bubble became insignificant in comparison with the wild speculative orgie of the last few years, which inflicted losses on the investing public of not less than three billions of dollars.

It is not the purpose of this paper, however, to discuss the economic phases of the trust problem, but to indicate the extent of the Federal power over those vast amalgamations of capital. The subject is one of overshadowing importance, for it will be generally recognized that if the Federal government has not the power to check the rapacity and abolish the abuses of the trusts, the legal power is non-existent. The States are obviously impotent to solve the problem, for their authority ceases with their respective borders. Steam and electricity have woven the American people into a closeness of life, of which the framers of the Constitution never dreamed, and the necessity for Federal police regulations as to a subject, which the force of events has brought largely within the Federal sphere of power, has become increasingly apparent.

The Constitution itself has been modified by economic developments and its great latent powers disclosed. Let me remind as one startled by the suggestion of an elastic Constitution that Marshall, the great Chief Justice, clearly perceived that the Constitution was little more than a working plan for an edifice that was to endure forever, and, that while it must guide the master builders, who in the future would erect the superstructure, it could not express the various means by which the sublime design was to be carried out. To quote his own language in the great case of McCulloch *vs.* Maryland:

> "This provision is made in a constitution intended to endure for ages to come, and consequently to be adapted to the various crises of human affairs. To prescribe the means by which government should in all future times execute its powers, would have been to change entirely the character of the instrument and give it the properties of a legal code. It would have been an unwise attempt to provide by immutable rules for exigencies, which, if foreseen at all, must be seen dimly and can be best provided for as they occur."

This truth was never more strikingly shown than in the last twenty years, when the Republic, partly through expansion of territory abroad and partly through the concentration of industrial interests at home, has entered upon a new and most important phase

of economic and constitutional development. By some marvelous intuition—or was it unconscious inspiration?—the Fathers "builded better than they knew;" and instead of attempting to define the powers of the Federal government they contented themselves with their enumeration in simplest phrase, and then—as a novel experiment in government—they created the august tribunal, whose sublime and lofty mission was to develop and unfold these latent powers. The nine Justices of the Supreme Court are a quasi-constitutional convention and continuously in session. Their deliberations fill one hundred and ninety-one volumes of reports, and the noble superstructure of the Federal government has steadily arisen by judicial interpretation upon the sure foundation which the Fathers laid. As the conditions which call for the exercise of constitutional powers change with the progress of the centuries, necessarily the true powers of the Constitution, often latent and unsuspected, must from time to time be disclosed and developed. The Constitution was and is a growth. As Jefferson well said: "It was made for the living, not for the dead."

A striking illustration of this truth is the so-called commerce clause of the Constitution. It was framed to meet almost primitive conditions. The colonists were largely farmers, who sowed, reaped, and transported their product in a manner little changed for a thousand years. The world at that time knew nothing of the possibilities of the railroad, the steamship, the telegraph, the cable, or the telephone. There was practically no inter-State trade except by sailing vessels which ran inland on tidal rivers. Coaches and wagons were the only methods of conveyance, and the transportation of merchandise, beyond the baggage of travelers, was an impossibility. Little could the Fathers have dreamed of an age when the United States, from ocean to ocean, would be covered by a very network of railroad, telegraph, and telephone lines, and when the States of the Union would be indissolubly bound together by shining paths of steel aggregating two hundred thousand miles in length. And yet, the commerce clause has been found broad and elastic enough to enable Congress to control and regulate the vast inter-State traffic of the United States, and has been applied to subjects, of which the Fathers did not even dream. If, therefore, we find ourselves in the strange sequence of events treading unbeaten paths

(and when did nation ever achieve greatness except along such paths?), and facing conditions and problems undreamed of by the Fathers, let it not be said that we are doing violence to their spirit if we apply their principles of government to such new conditions. The Constitution was great in what it expressly said, but it was infinitely greater in that which it left to interpretation.

When the American people first found themselves confronted with the assumed evils of railroad monopoly and industrial trusts, they turned to the Federal government and invoked its power over commerce for their suppression. A century had passed since the adoption of the Constitution and this power had rarely, if ever, been invoked, except to put a judicial veto on State legislation. The Supreme Court had held that the failure of Congress to legislate was the will of the nation that inter-State commerce should be free, and it struck down every State statute which in any manner impaired such freedom. When, however, Congress believed that the then-existing industrial trusts had been made possible by railway discrimination almost for the first time they exercised by an affirmative act their power to regulate commerce, and exactly one hundred years after the Federal Constitution had been adopted, the Inter-State Commerce Commission was created, whereby, for many purposes, the management of all inter-State railways was placed under the supervision, and subjected to the inquisitorial powers of a Federal commission. These inquisitorial powers have recently received strong confirmation in the decision, which requires the coal carriers to submit to the Commission the most intimate and secret details of their management and operation. While this act has failed to prevent wholly the abuses of railway discrimination, yet it has gone far to lessen them, and with the passage of the more recent Elkins Act, further progress may be reasonably anticipated.

With the passage of this act to regulate inter-State railways, Congress next proceeded to industrial combinations. The first bill was introduced by Senator Sherman on August 14, 1888, and a very flood-tide of proposed legislation succeeded. In the Fiftieth Congress, twenty bills were introduced; in the Fifty-first, twenty-three; in the Fifty-second, sixteen; in the Fifty-third, seventeen; in the Fifty-fourth, eight; in the Fifty-fifth, eleven; the Fifty-

sixth, twenty-one; and in the first session of the Fifty-seventh, twenty-two. Many of these bills excited prolonged discussion in both houses of Congress, and with the debates comprise over a thousand printed pages. The remedies suggested were many and various, and resort was sought to be had to other clauses of the Constitution besides the Commerce clause, such as the power over taxation, that over patents and that over the mails. Thus it was proposed by the abolition of customs duties to subject the trust, which had secured a monopoly of domestic trade, to the competition of the rest of the world. It was suggested that as an internal revenue tax had been imposed to drive out the currency of State banks, and the sale of oleomargarine had been largely destroyed by taxation and the constitutionality of such measures had been affirmed, that this power to destroy by taxation should be invoked. It was contended that as the government had exclusive power over the United States mails and could determine what mail matter should be thus transmitted, that the denial of the mails to monopolistic trusts would operate to destroy them. Under the judiciary power it was proposed to deny the trusts an appeal to the Federal courts in the enforcement of their contracts, and under the fiscal powers it was suggested that national banks and other government fiscal agencies should not receive on deposit or accept as collateral or otherwise deal in any stocks, bonds or securities of a trust. Any patent or copyright owned by a trust should be forfeited. It was even contended that the United States government should not deposit government moneys with any bank which in any manner deals with the stocks, bonds or securities of a trust. Under the commerce clause it was proposed that no corporation should engage in business outside of the State of its origin without a Federal license, and provisions were made for publicity as to its management and operation. Another provision was to forbid the inter-State transportation of trust-made commodities.

Many of these suggestions went into the scrap heap of defeated legislation, as indeed they deserved to do, and the sole result of this discussion—perhaps the most prolonged and earnest, with the exception of the tariff question, since the slavery days—was the so-called Sherman Anti-Trust Law, of July 2, 1890. This act in the most sweeping language, forbade every contract, combi-

nation in the form of trust or otherwise, or conspiracy in the restraint of trade or commerce among the several States or with foreign nations. As though this language were not sweeping enough, it provided that every person who shall monopolize, or attempt to monopolize, any part of the trade or commerce among the several States or with foreign nations should be guilty of a crime. It declared illegal every such contract or combination, and invested the Circuit Courts with power to restrain violations of the act. It is passing strange that an act, which was drawn by eminent lawyers and statesmen after prolonged discussion, should have been so loosely and unscientifically drawn. From its very passage, courts have been obliged to guess at its meaning. Consider, for example, the sweeping character of the language in Section 2, which makes it unlawful for any person to *monopolize any part* of inter-State or foreign trade. The very word "monopolize" belongs to the lax language of the political rostrum and not to the precise phraseology of the law-making department.

After the passage of the Sherman Anti-Trust Law, it was believed by many, including prominent members of Congress who had taken an active part in its passage, that it aimed solely at industrial or manufacturing trusts as distinguished from transportation combinations. It was contended that, as to the latter, Congress had fully legislated in the creation of the inter-State Commerce Commission. If such had been the real purpose of Congress, it was defeated by the interpretation placed upon the act by the Supreme Court; for in the Joint Traffic and Trans-Missouri cases the act was held to apply to any combination in restraint of trade between railroad carriers, while in the Sugar Trust case the value of the Act, to the extent that it was aimed at manufacturing monopolies, was materially impaired.

In the Sugar Trust suit, the then United States Attorney for the Eastern District of Pennsylvania sought to invalidate a contract which the American Sugar Refining Company had entered into with certain stockholders of Philadelphia refineries to purchase from them the stock of their companies. It was proved that with this acquisition the Sugar Trust had obtained control of refineries which controlled 98 per cent. of the sugar refined in this country. The element of conspiracy was sought to be eliminated

by proof of the fact that there was no understanding or concert of action between the various stockholders of the several Philadelphia companies, who had acted independently and in ignorance of each other's action, and that the contract of sale in each instance left the sellers free to establish other refineries and continue the business if they saw fit to do so, and contained no provision respecting trade or commerce in sugar, and that no arrangement or provision on this subject was subsequently made.

The relief sought was the cancellation of the agreements and the redelivery of the stock. It was admitted that the indirect but probable effect was a practical monopoly (using that term in its popular rather than its technical sense), of the inter-State sale of sugar, but it was held that "the fact that an article is manufactured for export to another State does not of itself make it an article of inter-State commerce, and the intent of the manufacturer does not determine the time when the article or product passes from the control of the State and belongs to commerce." On the authority of a previous case (Coe *vs.* Errol, 116 U. S., 517, 525), it was further held that inter-State commerce does not commence until "the final movement from the State of their origin to that of their destination." The court did not mean to intimate that such a combination might not have as its necessary purpose and effect a restraint of inter-State commerce in the sale of the product, but predicated its decision upon the statement that "there was nothing in the proofs to indicate any intention to put a restraint upon trade or commerce, and the fact as we have seen that trade or commerce might be indirectly affected was not enough to entitle complainants to a decree."

To at least one of the justices (Mr. Justice Harlan) this reason seemed somewhat scholastic in its subtlety and he filed a vigorous dissenting opinion to the effect that as the combination was obviously formed to eliminate competition in the inter-State sale of sugar, and as the acquisition of these refineries was one step in that direction that the conspiracy under the Sherman Anti-Trust Law had been established.

It is obvious from subsequent decisions of the court that the country much misunderstood the effect of this case. It was regarded as putting manufacturing trusts not only beyond the pur-

view of the Act of 1890, but beyond even the reach of Federal power; and in the discussions which subsequently ensued in Congress it was generally conceded that nothing further could be done against manufacturing monopolies other than transportation companies without an amendment to the Constitution, and various amendments were consequently proposed.

The Supreme Court, however, in the subsequent case of the United States *vs.* Addyston Pipe & Steel Company (175 U. S., 211), showed that the Knight case had been somewhat misinterpreted. In that case certain pipe and steel companies of different States entered into a combination to control the sale of cast iron pipes. They allotted certain territory in different States, in which each should have the exclusive right to sell their product. The Supreme Court held the combination illegal, and distinguished it from the Knight case, as to which it said:

"The direct purpose of the combination in the Knight case was the control of the manufacture of sugar. *There was no combination or agreement in terms regarding the future disposition of the manufactured article;* nothing looked to a transaction in the nature of inter-State commerce."

A still more significant opinion, however, has recently been handed down by the Supreme Court, and for some reason has not attracted the attention which its importance deserves. I refer to the case of Montague *vs.* Lowry, decided on February 23rd, 1904.

In that case there was no allotment of inter-State territory. It was a suit under Section 7 of the Sherman Anti-Trust Law, which gives treble damages to any person who shall be injured in his business or property by any violation of the act. The plaintiff, prior to the commencement of the suit, had been engaged in selling tiles in the city of San Francisco. A number of wholesale dealers in tiles in California and certain manufacturers of tiles who were residents of other States formed an unincorporated association to control the sale of tiles in California. It was shown that there were no manufacturers of tiles in that State, and that all tiles sold therein were procured from manufacturers in other States, and that, therefore, there existed an inter-State commerce between California and other States in the transportation and sale of this merchandise. The membership of the association was elective. It was provided that no member should purchase any tiles from any

manufacturer, who was not a member of the association, nor should they sell to any non-member at less than list prices, and manufacturers, who were members, were forbidden to sell to any person not a member of the association, under penalty of forfeiting their membership.

It will be observed that there was no allotment of territory between dealers, and with the exception of the stipulation as to the sale of tiles by non-resident manufacturers to California dealers the transactions were intra-State. The court, however, held that the agreement must be treated as a whole, and that it directly restrained inter-State commerce between the eastern manufacturer and the non-member, and was, therefore, invalid.

It is obvious that the prohibition of allotments of inter-State territory and of discrimination between buyers of inter-State shipments should effectually check two of the most common methods of building up an industrial monopoly.

The more interesting question remains, however, as to whether the Sherman Anti-Trust Law, with its sweeping and drastic provisions, has exhausted the constitutional power of Congress to legislate against the trusts. Without expressing any opinion as to whether there should be further legislation, which is a question of legislative policy, I am clearly of opinion that the Federal government has by no means exhausted its constitutional power.

While the commerce clause of the Constitution must prove the chief bulwark of the American people against industrial monopoly, yet it is by no means their only defense. The power to tax, which Marshall well described as the power to destroy, could be invoked with great effect, especially against the abuses of overcapitalization. Its destructive power has already been shown in the case of Veazie Bank *vs.* Fenno (8 Wallace U. S.), where the Supreme Court upheld a taxing statute, which was avowedly passed to drive out of circulation the currency notes of State banks. The Court said:

> "The first answer to this is that the judicial department cannot prescribe to the legislative department of government limitations upon the exercise of its acknowledged powers. The power to tax may be exercised oppressively upon persons, but the responsibility of the Legislature is not to the courts, but to the people by whom its members are elected. So if a particular tax bears heavily upon a corporation or a class of corporations it cannot for that reason only be pronounced contrary to the Constitution."

The doctrine of this case was, however, justified in subsequent cases by reference to the power of Congress to furnish to the country a uniform currency, and the power to destroy State currency, therefore, cannot be rested solely upon the power to tax. The power of taxation is often used as ancillary to other powers of the government. Prior to the Revolution no form of taxation was more common than that which was used to regulate trade and not to raise revenue, and the constitutionality of protective duties has since been justified, not under the theory that the power to tax gives in itself the power to protect an industry, but to the power to regulate foreign and inter-State commerce.

Later in the Oleomargarine cases, in passing upon the constitutionality of the internal revenue tax on oleomargarine (*in re* Kollock, 165 U. S., p. 536), where it was urged that the purpose of the Act was not for revenue, but to destroy the sale of oleomargarine, the Supreme Court said:

"The Act before us is on its face an Act for levying taxes, and although it may operate in so doing to prevent deception in the sale of oleomargarine as and for butter, its primary object must be assumed to be the raising of revenue."

Later, Congress passed an Act whereby it sought, through graded taxes, to prevent oleomargarine manufacturers from artificially coloring their product so as to make it look like butter. The legislation was obviously passed in the interests of the farmers and to discourage the sale of oleomargarine. The constitutionality of this Act is now under consideration by the Supreme Court in the case of Cliff *vs.* the United States, which was argued some months ago. When that case is decided we will probably have an authoritative exposition of the extent to which Congress, under the guise of taxation, can accomplish other ends. An Act which on its face is designed for revenue cannot be declared unconstitutional because of some presumed ulterior purpose, but it remains to be seen whether, when such ulterior purpose is plainly manifested, and when such purpose is not incident to any other express power, the court will not hold such a taxing statute unconstitutional.

Until the Supreme Court rules to the contrary, it cannot be said that graded excise taxes could not be used effectively to discourage excessive capitalization, while the maintenance of many

industrial monopolies could be further affected by the abolition of protective tariff duties.

Another obvious weapon of defense is the exclusive power of the Federal government over the mails. In *ex parte* Jackson, 86 U. S., p. 727, the defendant was convicted of circulating lottery matter through the mails in violation of the Federal statutes. It was contended, in substance, by the defendant, that under the power to establish "post offices and post roads" Congress had no power to regulate the morals of the community by excluding mail matter deemed to be immoral. The Supreme Court held, however, that

> "The power possessed by Congress embraces the regulation of the entire postal system of the country. The right to designate what shall be carried necessarily involves the right to determine what shall be excluded."

The court further held that the Act in question was not designed to interfere with the freedom of the press or with any other right of the people, but to refuse its postal facilities for the distribution of matter deemed injurious to the public morals, and this right of discrimination was sustained.

In the later case of *in re* Rapier (143 U. S., 110), an attempt was made by eminent counsel to have the court reconsider the question and make a distinction between mail matter which was *mala in se* and that which was only *mala prohibita*, but the court declined to do so and reaffirmed the right of Congress to discriminate between mail matter.

The freedom of the mails had been under discussion in 1836, when President Jackson recommended to Congress the propriety of a law to exclude from the mails such anti-slavery literature as was incendiary in character. Mr. Calhoun, while condemning in the strongest terms the publication sought to be excluded, insisted that Congress had no such power of exclusion, because it would abridge the liberty of the press. In Calhoun's view Webster acquiesced, while Senator Buchanan supported the bill on the ground of the power of Congress to carry in the mails only such matter as it saw fit. The bill was voted down.

It is obvious that if the mails were denied to industrial trusts their power to compete would be materially lessened. Business, especially that of an inter-State character, is largely conducted

through the mails. It is said that seven hundred millions of pieces of mail matter are distributed each year in this country, as against nine hundred millions for all of Europe. Unquestionably communication could be established through the media of the telegraph and the express companies, but the facility of communication in large business corporations would be materially injured. The question is, however, open, whether Congress would have the same power to exclude mail matter, which it deems prejudicial to the public interests for economic reasons, as that which it deems prejudicial to the public morals. The cases previously referred to go far to establish an absolute and unlimited power of the Federal government to discriminate between mail matter. The Courts have not as yet decided whether in the matter of constitutional power there is any distinction between mail matter which is prejudicial to the common welfare on economic grounds and that on moral grounds. This question will be considered hereafter, when I refer to the doctrine of the Lottery Cases.

Assuming that the trusts, either inherently or in the manner of their operation, are public evils requiring a remedy, the remedies already suggested are, however, too indirect, arbitrary, and artificial to secure adequate results. Enlightened public opinion would hardly justify this attempt "by indirections to find directions out," if a more natural method presents itself under the Constitution. Such method exists in the commerce clause, as to which the power of the Federal government is supreme, exclusive and plenary.

It may be assumed that few, if any, of the great industrial amalgamations confine their operations within the limits of any one State. Practically all engage in inter-State commerce, and many of them in foreign commerce, and the more direct method of regulating them is to regulate their use of these channels of inter-State and foreign trade. And here, as previously intimated, the force of events has caused an enormous expansion of Federal power.

Burke once said that the greatest struggles in the English constitutional history have revolved about the questions of taxation. This was once true of our own constitutional evolution as a nation, but in the last half century the irrepressible conflict between the Federal sovereignty and the autonomy of the States has had the commerce clause of the Constitution as its chief battle ground.

The reasonable elasticity of the Constitution—sometimes erroneously supposed to be rigid and inelastic—is nowhere more strikingly shown than in the expansion of this power to meet the complex problems, to which our concentrated and highly complex civilization has given rise. This is not due to the conscious effort of any department of the government, of any political party, or of any individual. Mr. Dooley's famous epigram that the Supreme Court follows the election returns was witty, but untrue; but the Supreme Court does follow, as does the rest of the world, the irresistible current of economic developments, with the result to-day that the commerce power has become the awakened and not "the sleeping giant" of the Constitution.

What is commerce? Chief Justice Marshall defined it with the illuminating word "intercourse." He clearly saw that intercommunication between different nations or States, whether it took the form of transportation of merchandise or the transit of individuals or the transmission of intelligence, was the appointed path to national independence and greatness. He therefore refused to limit the word "commerce" to the mere exchange of goods, and, in effect, decided that the general power which each constituent State possessed prior to 1787 over its external relations had become vested in the United States, and that in such transfer it was in no respect diminished, except by the express limitations in the Federal compact, such as the prohibition of preferences between different ports of various States and of export and clearance duties. The delegated power was as exhaustive and plenary as that which it was intended to supersede. Commerce, therefore, meant the intercourse or intercommunication of a State with other States, or with the rest of the world.

It was accordingly held in Covington Bridge Company *vs.* Kentucky, 154 U. S., 204, that the mere passage of a foot passenger from one side of the Ohio River to the other was commerce and the court added

> "And the thousands of people who daily pass and repass over this bridge may be as truly said to be engaged in commerce as if they were shipping cargoes of merchandise from New York to Liverpool"

Indeed, the mere transmission of intelligence is commerce, and the invisible messages which are transmitted along telegraph lines

from State to State, or those which flash through the deep sea cables, or those which by the genius of Marconi are transmitted by the "sightless couriers of the air"—all, whether affecting the sale of commodities or not, are equally commerce.

One of the most recent and important cases on this subject is the Lottery cases (188 U. S., 321), where the carriage of a lottery ticket from State to State was held to be inter-State commerce, although the commodity itself was outlawed as purchasable merchandise by the laws of the various States. The extent of the power was argued at great length, and the vital and momentous question was decided as to whether the right to "regulate"—that being the term used in the Constitution—was broad enough to include the right to prohibit altogether. As to foreign commerce, the right to prohibit had been exercised in the first years of the Republic by embargoes which were finally sustained, but it was contended that the power over foreign commerce is necessarily broader than the power over inter-State commerce, and that the design of the Constitution was to secure absolute freedom for inter-State trade. As to inter-State commerce the right to prohibit had rarely been exercised, except in cases which affected public health, such as the transportation of diseased meat or dangerous explosives, and it was contended that the Federal government could not prohibit inter-State shipments for the purpose of regulating the morals of the people, for the reason that such regulation was within the reserved police power of the States. In the Lottery Cases, the Supreme Court negatived this contention and sustained the power of the government to regulate by absolute prohibition. The Court in a learned opinion by Mr. Justice Harlan, said:

> "Are we prepared to say that a provision which is in effect a prohibition of the carriage of such articles from State to State is not a fit or appropriate mode for the regulation of that particular kind of commerce—or may not Congress for the protection of the people of all the States, and under the power to regulate inter-State commerce devise such means within the scope of the Constitution and not prohibited by it, as will drive that traffic out of commerce among the States?"

In answering this question, the court in its majority opinion unquestionably laid stress upon the supposed immoral nature of lotteries. It broadly claimed the same right for the Federal

Government as the State possessed with reference to domestic trade, "to take into view the evils that inhere in a particular form of commerce." But the court continued:

> "In this connection it must not be forgotten that the power of Congress to regulate commerce among the States is plenary, is complete in itself, and is subject to no limitations, except such as may be found in the Constitution."

And then the Court pointedly asks:

> "What provision in that instrument can be regarded as limiting the exercise of the power granted? What clause can be cited which in any degree countenances the suggestion that one may of right carry or cause to be carried from one State to another that which will harm the public morals?"

Here was an affirmative suggestion that at least so far as the public morals are concerned Congress may determine what commodities can be conveyed through the channels of inter-State trade.

The question remains, however, whether this comprehensive power to prohibit is limited to such commerce as in its nature and effect has some relation either to the physical health or moral welfare of the people, or does it extend to any form of commerce or any method of conducting it, which is prejudicial to the public welfare in an economic sense? Could, for example, the Federal government exclude from the channels of inter-State trade inter-State shipments by industrial monopolies? If they could, it is obvious that the trusts are to a very great extent subject to Federal power. It was this consideration which gave to the Lottery Case exceptional interest. It was justly regarded that the trust problem was in a measure involved. The court did not in words decide the question, but logically it unquestionably did. Possibly remembering that in the Dred Scott case it had attempted beyond the necessities of the case to solve a political problem, the court refused to say whether its decision necessarily—

> "led to the conclusion that Congress may *arbitrarily* exclude from commerce among the States any article, commodity or thing of whatever kind or nature, or however useful or valuable, which it may choose, *no matter with what motive*, to declare shall not be carried from one State to another."

While not deciding any question so extreme, it took occasion to say that the power to regulate "cannot be deemed *arbitrary* since it is subject to such limitations or restrictions as are prescribed by the Constitution." But the court had already quoted such restrictions and shown that they do not limit the power to

determine what form of commerce was prejudicial to the public welfare. The court, in its opinion, had already in effect, and indeed in words, decided that there was no sound distinction between considerations affecting public morals and those affecting the economic welfare of the people; for it had said:

"The Act of July 2nd, 1890, known as the Sherman Anti-Trust Law, and which is based upon the power of Congress to regulate commerce among the States, is an illustration of the proposition that regulations may take the form of prohibition. The object of that Act was to protect trade and commerce against unlawful restraints and monopolies; to accomplish that object Congress declared certain contracts to be illegal. That Act in effect prohibited the doing of certain things, and its prohibitory clauses have been sustained in several cases as valid under the power of Congress to regulate inter-State commerce."

If, therefore, Congress has the power to declare invalid any contract or combination in the nature of a monopoly which affects inter-State trade, it must of necessity have the lesser power to exclude from the channels of inter-State trade the shipments of such unlawful combinations. Indeed, the Act itself provides for the confiscation of all products in process of transportation, and if the goods can be confiscated in course of shipment, they assuredly can be excluded before they enter the channels of inter-State trade.

The Court did not define what it meant by the word "arbitrary," but it apparently meant an Act and clearly unjustified by "the general welfare," and subversive of the fundamental rights of the people. Such an exercise of power can be imagined. If Congress should deny the privileges of inter-State traffic to any men of a given political party, the ground of the discrimination would be so foreign to any just consideration of the "general welfare" and so subversive of the fundamental right to life and liberty, that the courts could declare it unconstitutional; but the prohibition of an industrial monopoly cannot be regarded as arbitrary, for in England and America the policy of the law, for five hundred years, has steadfastly set its face against oppressive combinations to control the sale of the necessaries of life. It follows that if Congress has the power to prohibit, it has the power to permit subject to such conditions as it may prescribe, and this unquestionably affords a wide field for the exercise of legislative wisdom with respect to combinations of capital. I must not be understood as

advocating any restrictive legislation for the repression of these vast combinations of capital, which for a time result in practical monopolies. Recent events give force to the suggestion that the trust evil will cure itself, if left to natural developments, and if there be a natural remedy, it is infinitely preferable to restrictive legislation. Too often legislative cures are worse than the disease, and produce in their operation "confusion worse confounded." The purpose of this paper, I repeat, is to discuss solely the abstract question of power under the Constitution. When that is determined the secondary question of the wisdom of its exercise rises for solution. My conclusion is that Federal power over inter-State commerce is ample to meet the abuses of the Trusts. I leave to others to discuss the wisdom of its exercise,

Before concluding this paper, I may briefly refer to the most recent and interesting illustration of Federal power over inter-State commerce. I refer to the Northern Securities case—*quorum pars minimum fui*—for I had the honor to be of counsel for the Government in the lower Court.

Few, if any, cases since the Legal Tender decision have excited greater interest, but this interest is more due to the magnitude of the money interests involved than to any novel principle of jurisprudence thereby declared.

The decision did not, in my judgment, trespass upon the rights of the States as to the formation of corporations. The charter of the Northern Securities Company was not invalidated, but was expressly affirmed. The court held that the language of the New Jersey Enabling Act, authorizing the charter of corporations "for any lawful purpose" was not intended to authorize any act which violated either State or Federal Laws. The purchase of a controlling interest in competing inter-State carriers was, therefore, held to be *ultra vires* under the laws of New Jersey. The case did decide that the purchase of a controlling interest in competing inter-State carriers was, *per se*, a restraint of inter-State trade. This, however, was not a novel principle, for the unlawfulness of consolidating parallel and competing lines, either by technical merger or by indirect means, had been written into the organic law of nearly every State, and the inhibition of the Sherman Anti-Trust Law of such con-

solidation as to inter-State carriers was but a reaffirmance of the settled public policy of the American people. The merger of these competing transcontinental carriers was permanent in duration, absolute in power, and infinite in possible extension; and if the government had permitted it, but had forbidden the mere pooling of rates it would assuredly have "strained at a gnat but swallowed a camel."

The underlying question, however, is as to whether competition between railways is either practicable or desirable. Other nations have reached the conclusion that the consolidation of railways into a few and even into one system is of greater benefit to the public than a number of separate systems. But it must be remembered that in most of these countries the question is solved by the merger of the railroads into the government, which thus owns and operates them. Whether in the absence of State ownership the consolidation of transportation companies is desirable is a question about which men may reasonably differ, and no question should receive earlier and more earnest consideration at the hands of Congress.

The Northern Securities decision is also of interest as indicating a possible future retreat by a majority of the Supreme Court from the extreme position of the Joint Traffic Case, that the Sherman Anti-Trust Law forbade all restraints of trade, whether they were at common law reasonable or unreasonable. At common law the courts reserved the right to determine whether under the circumstances of a particular case a contract in restraint of trade was reasonable or unreasonable, and unquestionably the increasing tendency of the courts in later years has been to regard such restraints, except in extreme cases, as reasonable. As to ordinary contracts between man and man this does not impose an excessive burden upon the judiciary, but I believe that it would be most unfortunate to cast upon the judiciary the burden of determining when a railroad consolidation was reasonable or unreasonable. Such contracts between transportation companies are not analogous to ordinary contracts. They affect the public profoundly and the companies are quasi-public bodies vested with public franchises und they therefore owe a higher duty to the State than the individual. The courts are already overburdened with questions

that are semi-legislative, and upon Congress, as the representative of the American people, should rest the responsibility of determining by a well conceived law the extent, if any, to which the consolidation of inter-State competing carriers should be permitted.

In this connection it has been suggested that all inter-State carriers should be required to operate under a Federal charter. It would not subject them to any greater extent to Federal power, which is already plenary, but it would enable the Federal government to deal with them in a less indirect manner. In the Constitutional Convention of 1787, James Madison twice proposed an article authorizing Congress "to grant charters to corporations in cases where the public good may require them and the authority of a single State may be incompetent." The proposition does not seem to have been seriously considered by the framers, although supported by Randolph and Wilson, and was sidetracked without a direct vote upon its merits, probably because so few corporations were then in existence and so little need existed for any. In 1791, Mr. Hamilton, in proposing that a charter be granted to create a bank of the United States, contended that Congress could "create a corporation in relation to the trade with foreign countries or to the trade between the States, because it is the province of the Federal government to regulate those objects," and this view the Supreme Court sustained in McCullagh *vs.* Maryland, where Chief Justice Marshall expressly said that Congress could issue a charter to "a railroad corporation for the purpose of promoting commerce among the States." As a matter of fact, both the Northern Pacific and the Union Pacific railways were originally incorporated under Federal laws.

For this exercise of Federal authority there was little need as long as the States used judgment and discretion in granting their charters, and as long as there was a reasonable uniformity between them as to corporation laws. In recent years, however, many States have vied with each other in the shameless and inconsiderate peddling of corporate franchises. In the Northern Securities case the country witnessed the extraordinary spectacle of the Governors of five Western States, whose policy forbade the consolidation of parallel and competing lines, invoking the protection of the

Federal government against the pretended powers of a New Jersey corporation.

The difficulty, however, with a Federal charter is that its authority is necessarily limited to inter-State trade and can confer none to operate wholly within the borders of a State. This would subject the average railroad to the necessity of two charters, and thus make "confusion worse confounded." In view of the centralizing tendencies of steam and electricity our country will eventually consider the propriety of such an amendment to the Constitution as will grant to transportation companies the right to transact their business throughout the country, whether inter-State or infra-State, under the protection of a Federal charter. Such a suggestion would have shocked Jefferson as much as the creation of the Bank, and perhaps even Hamilton would not have been prepared for so far-reaching an exercise of Federal power. But neither Hamilton nor Jefferson ever conceived the possibility of the railroad or the telegraph. Through their centripetal tendencies we are no longer a group of States, united with a slender thread of Federal power, but a national organism, whose arteries are the railroads and whose sensitive nerves are the telegraph wires, and this organism can no more be divided as to commerce into separately vital parts than you could divide the human body. As Mr. Justice Bradley strongly said, "In matters of foreign and inter-State commerce there are no States."

To paraphrase one of the most distinguished of living publicists, "it is a condition and not a theory which confronts us." Indeed that great President gave one of the most striking manifestations of the unity of the nation for commercial purposes when, in disregard of the clamor of labor agitators and political demagogues, he forcibly cleared the channels of inter-State trade from unlawful obstructions. Rarely has the supremacy of Federal power over inter-State trade been more strikingly manifested. If, as many believe, these channels are now obstructed by more powerful forces, which restrain the free flow of commerce and oppress the people by stifling competition, then assuredly an equal duty exists to vindicate the freedom of commerce from unlawful monopoly. The problem will not be solved in a day or a generation, and in the course of its solution many existing theories, legal and economic, will doubtless

be swept away. The question should be approached with neither passion nor hysteria, and to its solution the policy of publicity, which we largely owe to President Roosevelt, will make a valuable contribution. As the President well said in his last Message:

> "Publicity in corporate affairs will tend to do away with ignorance and will afford facts upon which intelligent action may be taken."

If the problem be approached in this spirit, it may be confidently predicted that in its solution the American people will not ultimately fail.

The Scope and Limits of Congressional Legislation Against the Trusts

By Charlton T. Lewis, LL.D.

THE SCOPE AND LIMITS OF CONGRESSIONAL LEGISLATION AGAINST THE TRUSTS

CHARLTON T. LEWIS, LL.D.

IN this discussion the word "trust" is accepted as meaning any aggregation of capital in corporate hands, so large as to be an important factor in any branch of industry. This is an abuse of the word, and has its origin in the fact that the earliest attempts to combine competing masses of capital which excited public apprehension were organized in the form of trusts, in which trustees controlled a plurality of corporations by holding the legal title to most of their stock. The application of familiar principles of the common law by the courts proved fatal to this form of organization. Individual corporations, however, soon arose, representing aggregations of capital as great or greater than any of the trusts had controlled, and the name of "trust" is indiscriminately applied to them in popular language. It is freely used by careless or prejudiced minds with the implication of illegality, which properly applies to the trust organization. But it is impossible to restore the term to its correct use, and with this explanation we must accept it.

A tendency to form these vast aggregations of capital has been singularly active of late. About five years ago began an extraordinary awakening of the spirit of enterprise throughout the civilized world. There had been a long period of comparative stagnation in most branches of industry, limiting invention, experiment, new construction, and the activity of speculation in general. But under the stimulus of overwhelming accumulations of saved capital in all markets seeking profitable investment, of new discoveries and large production of the precious metals, of revolutionary invention, especially in developing and applying electric power, there was a rapid and almost sudden outburst of speculative energy in Europe and America. It was natural that its forms should be profoundly impressed with that spirit of association which is the basis of civilization. This tendency had been foreshadowed in the social and political life of all civilized countries through the last half of the

Nineteenth Century. The most characteristic feature of universal history during that period has been the combination of States and nations into vast empires, of divided races into political units conscious of their kindred, of factions into parties, of workingmen within their industries into differentiated and interdependent groups, and outside of these industries, into Unions with vast aims and impulses; in short, the great inventions by which the barriers to intercourse were broken down had been the symbol of the entire social life of civilized humanity, from the diplomatic and administrative forces of government down to the parody upon true combination which is represented by the schools of Socialism.

Accordingly, it is a simple truth of social science that the formation of the trusts under this spirit of association is simply the application in the industrial world of the true law of progressive civilization. I cannot here justify this assertion in detail. It is, however, admitted by all intelligent students of the subject that the so-called "trusts" have already taken their place among the most beneficent forces of our industrial and commercial life. No measure can be made of the degree in which they have economized production, cheapened commodities, raised the average standard of comfort in life, organized intellect in all departments of practical work, opened new ways to ability and honorable ambition, and contributed to adjust the relations of labor to employers. But in each of these ways a work so important as to be revolutionary has been begun under their influence, and none can question that the natural tendency of their development, unless some counteracting forces be found which fatally interfere with it, must be steadily to increase the obligations to them of society at large.

How, then, are we to account for the widespread hostility felt toward the trusts? What is there in them, or in their influence and tendencies, to justify apprehensions of danger from them, either to the economic or to the moral and political interests of society? The hostility to them rests largely on an undefined dread which seems to have its origin in the vague declamations of demagogues, or in the prejudice of minds which are rebellious towards the entire organism of our industrial society. The cry of "Monopoly!" against the trusts is repeated and emphasized in a thousand forms and has great influence in exciting such prejudice. Yet no

serious student finds any foundation for a legislative attack upon large combinations of industrial capital in a real apprehension of monopoly. In fact, the popular and political tendency to respond to the denunciations of the great corporations as monopolists is certainly a temporary phenomenon, which is already beginning to disappear, and which must give place to more serious grounds of opposition if hostility to their existence is to be the permanent policy of any enlightened people. Students of high authority, however, have discovered and emphasized evils which have been associated with the recent growth of the great corporations. These are presented by public men claiming to be statesmen as a sufficient reason for indiscriminate attacks upon all corporations of this class. These evils are described in great detail as seen from different points of view, but for our purposes they may be summed up as substantially covered by two heads: first, improper discriminations in price of service by public service corporations between great industrial combinations and private shippers, resulting in the aggrandizement of the trusts at the expense of smaller and independent industries. Indeed, in several instances it is asserted with apparent reason that these discriminations have been the principal means of building up the power of certain trusts. Secondly, an evil which has essentially characterized the movement towards combination during recent years is commonly indicated by the word "over-capitalization," which really is used to point out all kinds of dishonest practices in the formation of trusts, by which their shares have been given to the public at inflated values, and promoters vastly enriched at the expense of investors. In short, the word commonly implies all the swindling processes in the production and manipulation of securities, which are facilitated by the vast volume of these combinations, in connection with the carelessness, the want of intelligence, and especially the low moral standard which are so general among investors and in the mercantile community at large.

These are the realities under the vague and often shadowy complaints which are made of the trusts. But careful reflection shows that all these evils really lie, not at all in the nature of the trusts themselves, but in the nature of the people who control them and deal with them. These forms of wrong have existed

as long as commercial immorality itself, and have become conspicuous in connection with the trusts solely because they become greater and more dangerous when perpetrated on so large a scale as that which has been opened to them in these combinations.

It is the business of government to prevent evils of these classes. Holders of a public franchise must administer it with equity, respecting the equal rights of all citizens. The police power of the government is as much bound to compel this course and to prevent unjust discrimination as it is to protect any form of private property against robbery. Fraud by direct or indirect misrepresentation of value, by deception wrought on a large or small scale, through forms of organization or falsehoods of bookkeeping, must be prevented, and, if perpetrated, must be punished with all the energy of which the strong arm of society is capable. Whether such wrongs are wrought in the handling of small or of great affairs makes no difference in principle; it is one of the first duties of organized society by its governments to suppress such wrongs, and if it fails to do so the fault lies in itself. But it must be carefully kept in mind that these classes of wrongs, like all other crimes against property, are and have been from the first direct violations of laws long established, and which it is the recognized duty of the courts to enforce. There is absolutely nothing in the nature of a large corporation to affect in any degree the character of these acts. There is nothing in the extent of the combinations of capital which have arisen in recent years to make these wrongs more dangerous in their nature, or more frequent. The growth of wealth, of course, holds out to fraud a greater promise of reward, and by increasing the temptation to wrong increases the necessity of vigilance against it, and of a thorough enforcement of the laws; but it has no tendency to make any new principles of law necessary. Fraud of every kind, in the organization and administration of the greatest of conceivable corporations, is in its nature the same as fraud in the most trivial dealings between individual citizens. If by reason of the great interests with which it deals it excites apprehension lest it be found impossible to suppress it, the reason must lie in a fear lest the government be too weak to execute the laws against the rich and powerful.

That an agency can be abused is not sufficient reason for

destroying it. Railroads, if mishandled, may be instruments in many ways, not only of fraud, but of danger to life. This proves the obligation to regulate them and to hold their administrators rigidly to their duty, but not to tear them up. Equally true is it that the trusts, which are becoming the great means of facilitating the advance of industry and improving the industrial organization of society, may be abused. In many instances, doubtless, the process of their formation and development has been tainted with fraud, and their organization has sometimes been controlled by interests not in harmony with the good of society at large. But what they need is regulation, and not destruction. Let all unfair discrimination be suppressed, let misrepresentation and fraud in the financial conduct of these great masses of capital be prevented, and the sources of just reproach against them will be stopped. They will then be recognized as beneficent and potent agents in the development of all national wealth and of social organization.

The more we reflect upon the conditions now confronting our industrial society and the period of transition through which it is passing, the more profoundly we shall be convinced that the essential defect is in the government itself, and is of a two-fold character. In the first place, it fails in its aims. It is an unquestioned fact that selfish aims, personal interests, class preferences, have to an extraordinary extent submerged statesmanship in our politics. So true is this that if in any public position a man appears whose actions and speech indicate an unreserved devotion to the public interests, with entire independence of local or class preferences, he is wondered at as a strange phenomenon. Such a man is noted as a theorist, a sentimentalist — as anything but a practical politician. It is hardly conceivable that a man of this stamp could obtain leadership in any party, or even a position as a representative candidate of any great political group. In the second place, government is defective in the misdirection of its efforts, through prejudice. Nothing more illogical, nothing more inconsistent with the principles of our institutions can well be imagined than the statutes by which trusts have been assailed in our State and National Legislatures; unless it be the curious absurdities of legislation which have not yet been adopted, but are strenuously advocated by many public men.

It would be interesting to review these in detail, but it is enough for our present purpose to point out that the most familiar of such statutes, those which have attracted the most attention—the Inter-State Commerce Act of Congress for the regulation of railroads and the so-called Sherman Law for the control of great industrial corporations, are of an essentially political character. Each of them is an undisguised bid for popular support on the part of a political faction. That is to say, it is an appeal to prejudice and ignorance, rather than an expression of constructive statesmanship. In the case of neither of these laws had the authors any conception of its real meaning, as that meaning has been evolved by the courts, nor of its ultimate effect. They did not know what they had done in passing them. The report of the Attorney-General of the United States presented to Congress in 1893 remains to this day one of the most important documents in the history of the subject. It stands in pointed contradiction to the work of Congress, as followed up by logical compulsion in the courts, from that day until now; but in its statesmanlike grasp of the real conditions of the questions before us, it has not since been equalled, and its fundamental positions have not been answered. It is as true to-day as it was then, that Congress has no power to limit corporations or citizens in the amount of property which they may acquire; that it has no power to make a crime of any act which is done by a corporation or a citizen under the sanction of the State, in the management of property which has been lawfully acquired; and that contracts in unreasonable restraint of trade are void at common law. Everything which has been done or attempted in violation of these principles, or in extension of them, by acts of Congress, and by judgments of the courts in pursuance of these acts, has served but to confuse the subject and to divert the intelligence of the country and the energies of the government from the proper work of enforcing the principles of the common law and preventing fraud.

The statement of what the evils to be apprehended from the trusts really are is enough to point out the direction in which the remedy is to be sought. It is the enforcement of the principles of the common law, which are nothing more nor less than the rules of business honesty, which is needed. The salient obstacle to this

enforcement in any case is the difficulty of obtaining legal evidence of fraud. This difficulty arises wholly from the fact that the wrongful transactions are carried on in secret. It would be impossible for a public-service corporation to discriminate unjustly between patrons, if every contract for its service were public. Complete publicity governing all the circumstances and all the business relations of such corporations would put an end to improper discrimination. Notwithstanding the many devices and tricks by which this kind of favoritism is sometimes disguised, it cannot be successfully concealed from experts who have access to truthful records of all the dealings. Objections are often urged to such publicity as improperly exposing business affairs to competitors. The objection has little application to corporations enjoying and operating public franchises. But whatever force there is in it in any case may be removed by fixing a limit of time within which the disclosure shall not be required. There is no good reason why any corporation, commercial or industrial, should not at any given date disclose without reserve every transaction which was closed upon its books not less than a twelve month before that date. Legislation designed to make it certain that such disclosure will be complete, unreserved and truthful, would have a definite and proper aim. It would be auxiliary to the enforcement of the principles of common law, and would in no sense be anti-trust legislation, as distinguished from legislation against fraud in general. But were it efficient, the apprehension of certain exposure in the near future would be a potent preventive of unjust discrimination and of kindred wrongs.

The same principle of enforced publicity applies with equal clearness, and without the necessity of any time limitation, in the organization of corporations, and especially of those which are planned to any extent as holders of the shares of other corporations. The moral sense of the community has been offended in many cases by the methods of promoters and organizers. It has become known that in the formation of several great corporations immense profits were obtained by the handling of securities at the expense of the ultimate shareholders, who invested their money in entire ignorance that such a dispositon would be made of much of it. The laws of Great Britain in this respect are vastly superior

to those of any of the United States, though it is recognized that experience has revealed imperfections in them. But they point the way for an excellent system of control in providing that the promoters of every new enterprise of a corporate character shall make a complete and candid disclosure of their own relations to the corporation and of their interests and possible profits. Any concealment from those who are invited to invest in such properties of the cost of the machinery employed in the organization should be made impossible. It is so clearly a cover for fraud that it should be prohibited and punished as itself a fraud. This cannot be accomplished, of course, without the co-operation of a large number of State governments; but there are fields of jurisdiction belonging to the National government in which it might well set the example.

The prime need of the times is that the moral tone of the organized community be strengthened. At present our politics reflect, in its lowest and basest side, the moral character of the nation; our legislation is the least developed and least scientific expression of our social organization; our beautiful civilization, with its glorious aspirations, its education, its patriotism, its progressive elevation of thought and life, its advance in culture, in humanity, in benevolence, finding expression in science, in literature, in social life, and in active charity, finds as yet no corresponding fulfillment of itself in government. Apart from the courts of law, where the traditions of a lofty standard of thought and of conscience are still to a large extent controlling, every branch of our government is infected by the commercial spirit, which often holds a veto upon statesmanship that interferes with class interests or with certain personal ends. This degeneration of political life taints and impresses with its own feebleness the moral energies of the community everywhere. Statesmanship in our State governments is no longer expected by public opinion, and its appearance would strike the nation with amazement. Hence it is that when frauds are perpetrated, either in the organization or in the administration of the trusts, government has neither the virtue nor the intelligence to apply the remedy. Legislation has failed to add anything whatever to the principles of the common law, in its attempts to regulate these combinations. Let the old and accepted principles of law be applied and enforced, and the problem would be solved. But these rules of justice must

needs be applied alike to the greatest corporation and to the poorest laborer.

One serious obstacle to such enforcement lies in the division of jurisdiction under our Constitution. The nation and the individual State must have the limits of jurisdiction and of power defined for each of them. The fact that commercialism and corruption have obtained great influence in the States led public opinion to accept the National government as a refuge. This did much to throw the moral sense of the country on the side of centralizing power in Congress. The natural and necessary result has been rapidly to lower the character of our national legislation and administration, until they have approximated the level to which the State governments had fallen. But the tendency to centralize power in the national administration and in Congress has been fostered by other influences, and is in fact but a part of the general movement of the association and combination which is the chief characteristic of our contemporary civilization. It has now gone too far to hope than it can be checked, even if a check were desirable.

The ultimate appeal in every case which, like that before us, involves the future of our institutions and of our civilization, is to the public intelligence and conscience. The present situation, and especially the present degradation of our political life, must be clearly acknowledged, but it is no reason for despair of the problem before us. There are already indications that public opinion is slowly becoming enlightened upon the social as well as the economical principles which must control the question, and this enlightenment promises to be the first step to a thorough awakening of the public conscience to the duties of government in the regulation of capital, and in particular, to the absolute necessity of enforcing sound moral principles in dealing with great commercial forces. Important changes in the attitude of vast communities upon kindred subjects are not without precedent. A century ago the entire civil service of Great Britain was permeated with corruption. Offices of state were largely subjects of bargain and sale; every department of administration was hampered and enfeebled by influences which were wholly controlled in private interests, as distinguished from those of the nation at large. To-day the picture is reversed: the tone of public morality is changed from its foundation, and the abuse

of public office to private gain is as definitely a crime to the common mind as any form of vulgar theft. In several divisions of the German empire a similar change has taken place. In both these countries, there is now practically no question of the ability of the government to deal with any commercial or industrial power which has a prospect of existence. The moral strength of our republic may be somewhat slower to develop, but there are instances enough in our history of the capacity of the people for moral indignation, and for a wise expression of it in law and administration, to justify us in full confidence that a similar process will furnish in the end a complete and permanent solution of this problem also.

The Northern Securities Case

By James Wilford Garner, Ph.D., University of Pennsylvania

THE NORTHERN SECURITIES CASE

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The history of the conception, organization and undoing of the Northern Securities Company cannot fail to be of interest to students of transportation problems and constitutional law.

The recent decision of the Supreme Court which restrains the company from carrying out its real purposes is generally regarded as one of the most important ever pronounced by that august tribunal. Opinions differ widely, however, as to the merits of the decision; some have gone so far as to say that it means more to the people of the United States than any other event which has happened since the Civil War;[1] others assert with equal confidence that a more iniquitous decree was never made by a court.[2] In this article an effort will be made to review the steps leading up to the organization of this remarkable corporation, the purposes for which it was formed, the various legal prosecutions which it underwent, the decision of the Supreme Court in its various bearings, and the perplexing question of readjustment following the decision.

I. CONCEPTION AND ORGANIZATION.

The Northern Securities Company is a corporation formed under the laws of New Jersey in November, 1901, for the primary purpose of acquiring and holding a majority of the stock of the Northern Pacific Railway Company, a Wisconsin corporation, and a part of the stock, but not a majority (so the Company alleges) of the Great Northern Railway Company, a Minnesota corporation.

The ultimate purpose, it was asserted, was not to vest the control of the two railroad systems in one body with a view to suppressing competition, but to protect the Northern Pacific road from the destructive raids of a third system and for the creation and development of a great volume of trade among the States of the Northwest and between the United States and the Orient by

[1] Remarks of Governor Van Sant, of Minnesota: Associated Press dispatch of March 14th
[2] Prof. C. C. Langdell: Harvard Law Review, vol. 16, p. 549.

establishing and maintaining a permanent schedule of cheap transportation rates.

The Great Northern and Northern Pacific railroads are substantially parallel lines extending from Lake Superior through the States of Minnesota, North Dakota, Montana, Idaho and Washington to the Pacific Ocean, each connecting with lines of steamships at their termini on the Great Lakes and the Pacific Ocean. Their aggregate length exceeds 10,000 miles and although separated at most points by an intervening country hundreds of miles in extent, they touch at several places, notably Duluth, St. Paul, Fargo, Helena, Spokane, and Seattle. The total amount of their interstate traffic which may be said to be distinctively competitive, is relatively small. Mr. Hill testified that it did not exceed ten per cent.[3] while counsel asserted that it did not exceed three per cent.[4] and this the Government did not deny, but asserted that even if the minimum estimate were true the total amount of traffic affected would approximate $800,000 per year.[5] Whatever may be the actual facts as to this point, the Supreme Court had already decided in a previous case that the two roads were parallel and competing lines.[6] Both have competitors in the Union Pacific Railroad on the South and the Canadian Pacific Railroad on the North, each of which extends to the Pacific Ocean, and the latter of which touches at St. Paul.

The policy of the Great Northern Railroad since 1893 has been determined mainly by Mr. James J. Hill and his associates, not through the ownership of a majority of the stock, for they have never owned more than one-third of the total, but by reason of the implicit confidence which the stockholders have reposed in Mr. Hill's remarkable ability and success.[7] The destinies of the Northern Pacific since its reorganization in 1896 have been mainly controlled by Mr. J. P. Morgan and his associates, who have acted in concert with Mr. Hill in matters affecting the interests of both systems. The first instance of this joint action was in 1896, when Mr. Morgan,

[3] Record, pp. 714, 715.

[4] Mr. Young's brief, p. 7; Mr. Grover's brief, pp. 4–7.

[5] Brief for the United States, p. 11; Mr. John G. Johnson, of Counsel for the defendants, thought as much as 25 per cent. of the interstate traffic of the two roads is nominally competitive, but that more than one-fifth of this could be transported by other systems.—(Johnson's brief, p. 5.)

[6] Pearsall *vs.* Great Northern Railway, 161 U. S., 646.

[7] Record, p. 698.

in effecting a reorganization of the Northern Pacific, entered into an arrangement with Mr. Hill by which the stockholders of the Great Northern were to take over one-half the capital stock of the Northern Pacific and to guarantee its bonds. This arrangement, however, was held to be a violation of the law of Minnesota which forbids the consolidation of parallel and competing lines of railroad, and the decision marks the first of the series of defeats which the Hill-Morgan interests have encountered in their efforts to establish a "community of interest" between the two roads. A second instance of the kind was a joint attempt early in 1901 to purchase the Chicago, Milwaukee and St. Paul Railroad, but the negotiations fell through. A joint effort was then made to purchase the Chicago, Burlington and Quincy, an extensive system embracing about 8,000 miles, traversing the States of Illinois, Iowa, Missouri, Nebraska, Wyoming and Colorado. This effort was successful, the purchase price being $200 per share, or about $216,000,000 in all, payable in the joint bonds of the two companies.[8] The motive alleged for the purchase was the desire to effect an arrangement by which west-bound freights could be secured for the empty lumber cars returning from the Mississippi Valley to the Pacific Coast, so as to reduce transportation rates on lumber and other heavy natural products from the far West. If markets for Eastern and Southern products could be created on the Pacific Coast and in the Orient, the problem of return freights for empty cars would be solved. To create this new trade it was necessary to give the Oriental importer assurance that the low transportation rates offered would be permanent. No such assurance, it was asserted, could be given if the Burlington road, which constituted an essential link in the connecting chain of transportation, might in the future be induced to make changes in its rates.[9]

Immediately after the purchase of the Burlington became known, those interested in the Union Pacific Railroad, chief of whom was Mr. E. H. Harriman, realizing the danger from a permanent competition which the transfer of the Burlington to the Hill-Morgan combination assured, made overtures for an allotment to them of a portion of the Burlington shares, but their request was denied.[10]

[8] Mr. Young's brief, p. 31.; brief for the United States, p. 17.

[9] Mr. Johnson's brief, p. 7.

[10] Mr. Hill's testimony, Record, p. 44–46.

Thereupon ensued the "raid" of the Union Pacific or Harriman interests on the Northern Pacific shares, culminating in the memorable panic of May 9, 1901. They succeeded in acquiring a majority of the total capital stock of the Northern Pacific Company, but fortunately for the Hill-Morgan interests nearly one-half of this stock belonged to the *preferred* class and was subject to retirement at any moment before January 1, 1917. It was the mistake of the Union Pacific interests in buying preferred instead of common stock that saved the Hill-Morgan interests from losing control of the Northern Pacific. The retirement of the preferred stock and the purchase of additional shares of common by Messrs. Hill and Morgan still left them in possession of a small majority of the shares. But there was always the danger that this majority might be converted into a minority at any moment by changes of ownership resulting from the death or weakening of the allegiance of friendly shareholders.

The effect of the acquisition of a majority of the shares of the Northern Pacific by the Union Pacific interests, Mr. Hill asserted, would be to put its control practically in the hands of those who were hostile to its growth and development and destroy its value. The interests of the Great Northern shareholders, he asserted, would be similarly affected.[11] To prevent the possibility of such a contingency in the future and to protect the Northern Pacific Company from the recurrence of future "raids," it was determined by Mr. Hill, Mr. Morgan and their associates to form a holding corporation to which should be transferred in full ownership the shares of the Northern Pacific Company held by Mr. Morgan and his associates as well as those held by Mr. Hill and his friends in the Great Northern. This would give the proposed company a majority of the Northern Pacific shares, but less than one-third of those of the Great Northern.

To use Mr. Morgan's language: "What I wanted to accomplish was to put that stock where it would be protected."[12] It was first proposed to organize the holding company as a Minnesota corporation provided a territorial charter could be found which was beyond the power of legislative amendment, but a diligent search failed to find such an one.[13] Organization under the general laws of

[11] Mr. Hill's testimony, p. 694.

[12] Mr. Morgan's testimony: Record, p. 344.

[13] Colonel Clough's testimony: Record, p. 784.

the State of Minnesota was not favored because of the double liability imposed on shareholders and the general unfriendliness of the State towards corporations. After an examination of the laws of West Virginia, New York, and New Jersey, the latter State was selected "principally because its incorporation laws were of earlier date and had been more thoroughly construed than those of other States."[14]

On November 13, 1901, the projected company was incorporated under the name of the Northern Securities Company. It was agreed that its shares should be given in exchange for Northern Pacific shares on the basis of $115 per share and for Great Northern stock on the basis of $180 per share, the price in both cases being somewhat less than the market value, a fact which is not without significance. The original plan was to capitalize the concern at an amount only sufficient to acquire a majority of the Northern Pacific stock and the holdings of Mr. Hill and his friends in the Great Northern which amounted to less than one-third of the total. Subsequently the scheme was enlarged so as to give all the shareholders an opportunity to sell their stock to the new company, not for the purpose, it was asserted, of acquiring a majority of the Great Northern stock, but to give all the shareholders the same opportunities that were given to Mr. Hill's friends. The capital stock of the Northern Securities Company was, therefore, fixed at $400,000,000, the estimated amount necessary to take over at the exchange valuation agreed upon the entire capital stock of the Great Northern and Northern Pacific companies. Shortly after the organization of the company a considerable number of the "outside" holders of Great Northern stock upon the advice of Mr. Hill that they could do so with profit and advantage to themselves, accepted the offer of the Northern Securities Company and sold their holdings on the basis mentioned above.[15] The result was that within a month after the organization of the Northern Securities Company it had acquired about 76 per cent. of the entire capital stock of the Great Northern Railroad. A few weeks later the Union Pacific holders of Northern Pacific stock seeing that they were outdone sold their stock to Mr. Morgan, receiving pay partly in cash and partly in Northern Securities stock, as a result

[14] Mr. Young's brief, p. 69; Mr. Grover s brief, p. 46.
[15] Brief for the United States, p. 46; also Mr. Hill's letter: Record, p. 703.

of which the Northern Securities Company came into possession of about 96 per cent. of all the shares of the Northern Pacific. The effect was to place the control of the two roads in the hands of a single corporation, the Northern Securities Company, and to substitute in the place of two distinct sets of stockholders with rival and competing interests, one set of stockholders with common interests, or, to use the language of the Court, "the stockholders of the two competing companies disappeared, as such, for the moment, but immediately reappeared as stockholders of the holding company which was hereafter to guard the interests of both sets of stockholders as a unit."

II. The Securities Company in Court.

Soon after the full import of the organization became known a conference of Governors and Attorneys-General representing the States directly affected was held, upon the suggestion of the Governor of Minnesota, at Helena (December 30) and it was decided that the State of Minnesota should bring suit under the Sherman Act against the Securities Company in the United States Supreme Court. Permission, however, to file a bill for this purpose was denied. The State of Minnesota then instituted proceedings in its own courts; the case was transferred to the United States Circuit Court and eventually carried to the Supreme Court, when a decision was rendered April 11, 1904, against the State on a ground of jurisdiction.

But the suit that was destined to result in the undoing of the Securities Company was that instituted on March 10, 1902, on behalf of the United States, in the Federal Circuit Court for the District of Minnesota. The case was heard before the four judges of the Eighth Circuit in accordance with the Act of February 11, 1903, for expediting the hearing of anti-trust cases, which provides that such cases shall be heard before not less than three Circuit Judges of the Circuit in which the suit is brought and that appeals from them shall lie directly to the Supreme Court. On April 9, 1903, a unanimous decision was rendered holding that the acquisition by the Northern Securities Company of a majority of the Stock of the Northern Pacific and Great Northern roads was a combination or conspiracy in restraint of trade among the States, and a decree was issued prohibiting the company from acquiring further stock of the two

roads, from voting stock already acquired, from receiving dividends thereon, and from exercising any control over either road. The defendant railroads were enjoined from permitting their stock to be voted to the Northern Securities Company or paying dividends to the Northern Securities Company. Subsequently one of the judges suspended that part of the decree which forbade the payment of dividends, pending an appeal to the Supreme Court, to which the case was now carried.

The several lines of argument upon which the defendants relied may be roughly grouped as follows:

First, the acquisition by the Northern Securities Company of a majority of the shares of the two defendant railroad companies was not a "contract, combination or conspiracy" in restraint of trade or commerce among the States nor a "monopoly" of such trade but simply a contract of purchase and sale in no way connected with interstate trade or commerce. An agreement among competing lines to fix rates as in the Trans-Missouri case, or an agreement among manufacturing concerns not to compete among themselves for the sale of their products, as in the Addyston Pipe case, were true contracts in restraint of trade, but only by the wildest stretch of the imagination, they contended, could an agreement to acquire property be placed in the same category. Nor could it be said that there was any monopoly even though it were granted that the purpose of the "merger" was to suppress competition, since monopoly involves the idea of the exclusion of other supply. There could be no monopoly unless all the existing roads were acquired by the Securities Company and the building of others was forbidden.

Second, there was no evidence of intention upon the part of the defendants to restrain or monopolize trade among the States as charged by the Government. The underlying motive, they asserted, was not to suppress competition, but to protect from the hostility of an enemy an arrangement designed to create and extend commerce both among the States and with foreign countries. In support of this proposition it was shown that the lumber business had been enormously developed, that a large trade in cotton and steel products with the Orient had been created and that transportation rates had been considerably reduced—so much so that a loss of $1,000,000 in net earnings had resulted. It was, for example, shown that flour was being

transported from points in the Mississippi Valley to China, a distance of nearly 8,000 miles, at the rate of 80 cents per barrel, while the rate to New York from the same points, distances less than 1,500 miles, was fifty-five cents per barrel.[16] The problem of return freights had been solved and a large coal traffic between Illinois and the States traversed by the Great Northern and Northern Pacific lines had been developed, the result of which was to relieve the inhabitants of this region of dependence upon the distant mines of Pennsylvania. In short, from whatever point of view it was considered only results of the highest benefit to the public at large had followed the "merger" and although this did not prove the absence of criminal intent, it constituted a very strong presumption against such intent. The defendants insisted that if the mere act of acquiring the stock of the two roads itself constituted restraint the presence or absence of evil intent was immaterial, but if it did not and this seemed self-evident, and if such acquisition had not resulted in restraint and the contrary was conclusively proven by the defendants and was not denied by the government, then the existence of criminal intent was necessary to constitute an offense. The government took the position that both questions were immaterial and the Court sustained the contention.

To the allegation of the government that the Securities Company had been able to acquire a majority of the shares of the Great Northern (Mr. Hill and his friends owned but twenty-seven per cent. of the total) only by the "advice, procurement and persuasion" of Mr. Hill, the defendants replied in effect that the Company never contemplated taking over any of the Great Northern stock except that owned by Mr. Hill and his friends, and in fact would have preferred not to admit "outsiders," but not wishing to expose themselves to criticism it was decided to allow them to exchange their shares for Northern Securities stock if they wished. Being applied to for advice Mr. Hill prepared a circular to be sent only to those making inquiries, stating that in his opinion the Northern Securities offer could be accepted with profit and advantage.[17] Further than this there was no "advice, procurement or persuasion."

Third, the Northern Securities Company did not possess the

[16] Mr. Johnson's brief, pp. 13–16; see also Mr. Grover's brief, pp. 105–109; Mr. Hill's testimony: Record, pp. 677–737; Mr. Young's brief, pp. 29–41.

[17] Mr. Young's brief, pp. 79, 80

power to restrain the trade of either road. It was merely an investment company and was not engaged in the business of transportation. The two railroad companies still remained as separate corporations with separate boards of directors, and by the laws of Minnesota and Wisconsin, no person who was a director in one company could serve on the board of directors of the other. Each was left free to conduct its own business independently of the other and it was therefore immaterial who held the shares since the affairs of a corporation are managed not by the shareholders but by the directors.[18] When it is remembered, however, that the election of the boards of directors of both roads was vested in the Securities Company this argument will be seen to have little weight.

Fourth, granting *arguendo* the contention of the Government that the Northern Securities Company had acquired the *power* to suppress the relatively insignificant amount of distinctly interstate traffic it did not follow that the power would be exercised. The mere possession of power to do wrong is not criminally reprehensible if not exercised. It is the abuse of power, and not the possession of it that the law condemns. The man who purchases a gun acquires the power to commit a crime, but it is the exercise of the power that is punishable. There is no identity between the power to suppress competition and suppression any more than there is between potentiality and actuality. Moreover, the failure to exercise the power for more than two years after acquiring it rather constituted a presumption that it would not be exercised.

Fifth. The power of Congress to regulate interstate commerce does not include the power to regulate the acquisition, transfer and ownership of shares of stock in corporations created under State law. The defendants contended that the overt act which had been committed was nothing more than the acquisition by one State corporation of the shares of two other State corporations. It was only a transaction of purchase and sale which had no more to do with interstate commerce than did the purchase by a farmer of an additional farm or the acquisition by a manufacturer of a neighboring factory or other enterprise. The corporations concerned being creatures of the State it necessarily followed that the power to determine who should own their shares of stock, the conditions under

[18] Mr. Young's brief, pp. 101, 192, 196.

which they should be held or transferred, the voting power which should attach to each, the liability of the shareholders, etc., belonged to the States which created them and to no other authority.[19]

Sixth. Still another line of argument which deserves more consideration than it has received was the contention of the defendants that the Sherman Act was not intended to include agreements to purchase railways or to acquire the shares of competing lines or to consolidations, inasmuch as Congress well knew that at the time of the enactment of the Anti-trust Law the greater part of the railway system of the country rested upon such combinations either expressly authorized or tacitly permitted by the States, some of them having existed many years. If, therefore, it had been the purpose of Congress to declare such arrangements illegal, their securities void, and the State legislation authorizing them to be unconstitutional, it would have been so declared in more specific language than is employed in the Sherman Act. Many "mergers" have occurred since the enactment of the Sherman law and they have all been a matter of common knowledge.[20] But in no instance has the Sherman law been invoked against one of them, although they have practically destroyed competition in the territories traversed by them. The explanation offered was, that in the judgment of the Government, they were not combinations *directly* in restraint of interstate commerce and consequently the Sherman Act had no application. The defendants in the Northern Securities Company insisted that if the act did not apply to those combinations it should not be construed to apply to theirs.[21]

Seventh. The Sherman Act was directed only against *unreasonable* restraints of trade such as restrictions with regard to the place of carrying on trade, the amount to be done, the regulation of prices, the use of trade secrets, etc., and not against those incidental and reasonable restraints that were always regarded as unobjectionable at common law.

Eighth. The Sherman law being a criminal statute should be strictly construed, or at least should not be enlarged by construction.

[19] Mr. Young s brief, pp. 227–237; Mr. Johnson's brief, pp. 60–67.

[20] It was pointed out for example that of the six railroad and steamship lines between New York and Boston not one was free to compete with the others. Likewise the several originally competing lines between Washington and New York are now all under the control of a single road.

[21] Mr. Young's brief, pp. 238–272.

This being true, the first section should not be stretched so as to make criminal every agreement that merely *tends* to restrain trade or that merely confers *power* to restrain.[22] To be brought under the condemnation of the Anti-Trust Act the agreement must be one which will of itself operate as a restraint and not one from which restraint results only as an incident of the ownership of property. This was the doctrine of the Hopkins case where it was said that the Sherman Act applied only to those contracts whose direct and immediate effect is restraint.

Ninth. The Government was not entitled to maintain this action for the conspiracy charged, if it ever existed, had accomplished its purpose and had come to an end before proceedings were commenced against the defendants. The overt act had already been done and could not, therefore, be restrained after its consummation. The relief which the Sherman Act affords is power to restrain *executory* acts and not those already executed.

III. The Opinion of the Court.

The arguments in the case were heard at Washington, December 14th and 15th, and the decision of the Court was announced on March 14th. The decree of the Circuit Court was affirmed by a vote of five to four. Justice Peckham, who wrote the majority opinions in the Trans-Missouri and Joint Traffic cases, Chief Justice Fuller, who concurred in both of these opinions, and Justices Holmes and White, dissented in the present case. Neither Justice Peckham nor Chief Justice Fuller have undergone a change of view, as is sometimes asserted, but were forced to separate from their colleagues with whom they had concurred in the two preceding cases, on account of the presence of a new issue in the present case, namely, the right of Congress to regulate the ownership and control of property in State corporations. No such question as this was raised in either of the traffic cases, the main issue there relating, so far as the power of Congress was concerned, to agreements or arrangements among interstate railroads to regulate their rates and pool their traffic. Their positions in those cases and in this one are, therefore, not at all inconsistent. The prevailing opinion in the present case was written by Justice Harlan, who had written the dissenting opinion in the Knight case.

[22] Mr. Young's brief, p. 119.

Brushing aside as immaterial various minor contentions of the defendants the Court went directly to what it considered the two main questions involved. These were, first, whether through the organization of the Northern Securities Company the power had been acquired to restrain or monopolize commerce among the States and, second, whether the application of the Sherman law could be extended to such cases as this one where the right of the individual to acquire and hold property in a State corporation was in issue. Without directly imputing bad motives to the defendants the Court declared that the effect of placing a majority of the shares of the stock of the two roads in the hands of a holding corporation, which the Court described as a "mere custodian," was to give it the power to control the operation of both roads in the interest of those who were the stockholders in the constituent companies, as much so for every practical purpose as if it had been itself a railroad corporation which had built, owned and operated both lines for the exclusive benefit of its stockholders. It necessarily resulted from this arrangement that the constituent companies ceased to be in active competition for trade and commerce along their lines as formerly, and became practically "one powerful consolidated corporation, the principal object of which was to carry out the purpose of the original combination under which competition between the constituent companies would cease." No scheme or device, the Court thought, could more effectively suppress competition between the two roads, and that was enough to bring it under the terms of the Sherman Act.

From this it will be seen that the Court took the position which the defendants had vigorously denounced as untenable, namely that under the Sherman Act the mere acquisition by the Securities Company of the stock of the two roads in question was in itself a contract, combination or trust in restraint of trade among the States. It refused to consider this transaction as the mere preliminary step in an arrangement which might result in restraint, but treated the preliminary act as the thing itself that was prohibited. In other words, it refused to recognize in this particular case, at least, any distinction between that which restrains and that which may result in restraint; between cause and result; between the possession of power and the exercise of power; between actuality and potentiality. In acquiring the power to do the things made unlawful by the Sherman

Act the Securities Company had in effect committed the forbidden act. The acquisition of the power to suppress competition being, in the opinion of the Court, forbidden by the Sherman Act, neither goodness of motive nor proof that there had been no actual restraint could condone the offense.

The contention of the defendants that the Sherman Act was intended to prohibit only those restraints which are unreasonable at common law was also dismissed by the Court as immaterial since this question had already been passed upon by the Court in other cases and was, therefore, *res adjudicata*. To their contention that the Sherman law prohibited only those acts in *direct* and *immediate* restraint, and not such as were merely "incidental to the ownership of property" the Court in effect answered that it had become a settled rule in the interpretation of the Anti-Trust Act that its application was not restricted to those combinations which result or may result in a total suppression of commerce or in a complete monopoly, but included as well those which by their necessary operation tend to restrain or monopolize and to deprive the public of the advantages that flow from free competition.

Taking up the proposition toward which the defendants directed their strongest efforts, namely, that the fundamental question involved in this case was, whether the power of Congress over interstate commerce extends to the regulation of the acquisition, ownership and disposition of stock in railroad corporations created under State law merely by reason of their being engaged in such commerce, the Court undertook to show that such a statement of the issue was wholly misleading and unwarranted; that it was merely setting up men of straw to be easily stricken down; that there was no reason to suppose that Congress had intended to interfere with the ownership and control of stock in State corporations; and that the Court did not understand that the Government had made any such contentions. But, said the Court, the Government does contend that Congress may protect the freedom of interstate commerce by any means that are appropriate and not prohibited by the Constitution and that no State corporation can stand in the way of the enforcement of the national will, legally expressed, by projecting its authority across the continent into other States. It was not so much a question of whether Congress may control State

corporations as a question of whether State corporations may control Congress by interposing obstacles in the way of the exercise of its Constitutional powers. To admit that a State may endow one of its corporations with authority to restrain interstate commerce was to say that Congress, in exercising its power to regulate such commerce, must act in subordination to the will of the States when exerting their power to create corporations. No such view, said the Court, could be entertained for a moment. So far as the Constitution of the United States was concerned, said the Court, the States may create corporations of every kind, authorize them to engage in commerce, foreign as well as domestic, regulate all the incidents of corporate existence to the exclusion of the power of Congress, but they cannot empower any person, corporation or combination to defeat the will of the United States expressed through its Constitution and the laws passed in pursuance thereof.

To avoid the appearance of imputing to the State of New Jersey conscious intent to endow the Northern Securities Company with power to violate the Sherman Act the Court took occasion to say in passing that nothing in the record tended to show that the authorities of New Jersey had any reason to suspect that those who took advantage of its liberal incorporation laws had in view a purpose to destroy competition between two great railway carriers engaged in interstate commerce in distant States of the Union. The contention of the defendants that the Securities Company was not a railroad corporation, but an *investment* company, and that the transaction complained of imported simply an investment in the stock of other corporations, the Court seemed to think was not seriously made. This view was declared to be wholly fallacious and inconsistent with the actual facts, since there was no actual investment whatever there may have been in form.

The Northern Securities Company, the Court intimated, was not organized in good faith, but was merely a *contrivance*, a custodian or trustee for affecting indirectly a purpose which could not be accomplished directly. The suggestion of counsel for defense that no effective relief could be granted, since the alleged combination had accomplished its object before the commencement of the suit, the Court likewise treated as unworthy of more than a passing notice. It would be a novel, not to say absurd, interpretation of

the Anti-Trust Act, it was asserted, to hold that after an unlawful combination had been formed and had acquired the power to restrain commerce by suppressing competition and was proceeding to use that power, it should be left in possession of such power with unobstructed freedom to exercise it.

The many suggestions made in the course of the arguments that an interpretation of the Anti-Trust Act in accordance with the views of the government would seriously interfere with legitimate business interests and work widespread financial ruin were treated by the Court as gratuitous assertions. Such predictions had been made by the defendants in all the preceding cases arising under the Act and in no instance had they been verified. They were, therefore, entitled to no weight in the decision of the present case. The judgment of the Circuit Court of Appeals was, therefore, confirmed.

Mr. Justice Brewer, while concurring in the judgment, felt constrained to reject some of the reasons on which it was sustained for fear, as he said, "that the broad and sweeping language of the Court might tend to unsettle legitimate business enterprises, encourage improper disregard of reasonable contracts and invite unnecessary litigation." Instead of holding that the Anti-Trust Act included all contracts in restraint of trade, reasonable or unreasonable, the ruling, he said, "should have been that the contracts involved in this case were unreasonable restraints of interstate trade and, as such, were within the scope of the Act." He based this opinion on the language of the title of the Act which showed that it was directed only against "unlawful restraints and monopolies" which, according to a long course of decisions at common law had reference to unreasonable restraints and not those "minor contracts in practical restraint of trade" which had always been upheld as reasonable. His idea was that there being no national common law Congress intended merely to engraft upon the jurisprudence of the United States that well understood part of the common law which related to monopolies and combinations in restraint of trade; and, unless it clearly appeared from the language of the Act that a departure from the rules and definitions of the common law was intended, no such purpose should be construed. Furthermore, he expressed the opinion that the general language of the Act was limited by the

inalienable right of the individual to manage his own property and make such investments as his judgment dictated. Applying this principle to the present case, he asserted that had Mr. Hill owned a majority of stock of the Great Northern Railway Co. he could not by any Act of Congress be deprived of the right of investing his surplus capital in the purchase of Northern Pacific stock, although such purchase might give him control over both companies. That is, he should have the same right to purchase Northern Pacific stock which all other citizens have. In other words it was his idea that to be an unlawful restraint under the Sherman Act, there must be a combination of two or more persons; restraint, however great, by a single individual if the result of the exercise of his right of investment could not be objectionable. It is respectfully submitted that this view is not justified by a reasonable interpretation of that part of the Sherman Act which relates to monopolies.

However, the opinion of Justice Brewer on this point was *obiter*, as the right of a single individual to invest his means according to his own will was not presented in this case. Here was a combination of individuals, and the prohibition of such a combination, he admitted, was not at all inconsistent with the right of an individual to purchase the stock of a corporation.

The views of the dissenting Justices were expressed in two separate opinions, one written by Justice White, the other by Justice Holmes. Justice White laid down the proposition that the fundamental question involved in the case was, whether Congress has power to regulate the acquisition and ownership of property in State corporations, and on this he wrote a long, ingenious, and, it must be admitted, able argument. It is submitted, however, with all due deference, that his premise was wholly erroneous, being due to a mental confusion of the right of the individual to acquire and own property with his right to enter into a combination for the purpose of violating a law of the United States. With such a premise it was not difficult to prove his point and he did so effectively. His opinion contained some extreme propositions and sweeping assertions, rather notable as effective displays of rhetoric than as logical deductions from the real question decided. Such was the statement that the contention of the majority was "absolutely destructive" of the reserved rights of the States and that upon

the ruins of the Federal system would be erected a government "endowed with arbitrary power to disregard the great guaranty of life, liberty and property and every other safeguard upon which organized civil society depends."

Justice Holmes addressed himself mainly to the question of whether, conceding the power of Congress in the premises, the Sherman Act applied to the present case. His argument against the contention of the majority on this point was, first, that the Sherman Act is a criminal statute and should not be construed to punish acts which have always been lawful unless it expressed its intent in clear and unmistakable language. The present act, he said, should be read as if the question were whether two small exporting grocers should be sent to jail. In the second place, he contended that the forbidden contracts and combinations in restraint of trade were those dealt with and defined by the common law. Contracts in restraint of trade at common law were contracts with a *stranger* for the purpose of restricting the freedom of the contractor; combinations in restraint of trade were those formed with a view of keeping strangers to the agreement out of the business. In the present case there was no attempt to exclude strangers to the combination from competing in the business which it carried on. The Sherman Act, he declared, was not aimed at community of interest arrangements, but was intended to prohibit contracts with a stranger to the defendants, business, such as that involved in the Trans-Missouri Freight Association. Thirdly, to say that "every contract in restraint of trade" and "every attempt to monopolize any part" of interstate commerce was punishable would, he said, send to prison the members of every partnership and the owners of practically every railroad, for there was hardly one that did not monopolize, in a popular sense, some part of interstate commerce. Such a view could have no other effect than to make eternal the *bellum omnium contra omnes* and disintegrate society so far as it could into individual atoms.

IV. The Problem of Readjustment.

The decree of the Circuit Court, as affirmed by the Supreme Court, did not work a dissolution of the Northern Securities Company, did not, in fact, affect its legal status in the least, but only enjoined it from acquiring further stock or from voting that which it had

already acquired, or from exercising any control over either road; nor did it have any perceptible effect on the price of Northern Securities stock. Within a week after the decision its shares had risen eight points in the market. The decree did not, as was generally reported, command the return to the original stockholders of the two roads of the shares transferred by them to the Securities Company in exchange for its stock, but merely directed that nothing contained in the decree should be construed as prohibiting such return. That is to say, the decree was permissive rather than mandatory so far as the question of the return of the stock was concerned.

As the two railroad companies, however, were enjoined from paying dividends to the Securities Company on the stock which it had acquired from them nothing was left but to return it or suffer the loss of dividends. On March 22d, following the decision of the Supreme Court, a circular letter was sent to the stockholders announcing that the Directors had decided to continue the existence of the Company but to reduce its capital stock by 99 per cent., the remaining 1 per cent., amounting to about $4,000,000 and consisting of securities other than Northern Pacific or Great Northern stock was to be retained until it should be decided to wind up the affairs of the Company.

The 99 per cent. representing stock acquired from the Great Northern and Northern Pacific railroads was to be returned to those who had given it in exchange for Northern Securities stock. This could be done in either of two ways, namely, by a *pro rata* method, each shareholder receiving back an equivalent of his Northern Securities holdings in the stock of both roads, or by returning to each shareholder the original stock held by him in one road. The Hill-Morgan interests adopted the first method. Figured on the basis of 180 for Great Northern and 115 for Northern Pacific each holder of one share of Northern Securities Stock would get back $39.27 of Northern Pacific stock and $30.15 of Great Northern stock. This would amount in effect, not to a restoration of the *status quo ante*, but a redistribution, the effect of which would be to give each original owner of stock in one road a joint interest in both roads. The far-reaching consequences to the Harriman holders of this method of redistribution were soon apparent. It will be remembered that at the time of the formation of the Northern Securities Company

the Union Pacific interests represented by Mr. Harriman and his associates held a majority of the shares of stock in the Northern Pacific, which shares were acquired by the Northern Securities Company under circumstances which have already been described in the early part of this article. By the methods of redistribution proposed the Harriman interests instead of getting back their original Northern Pacific shares, and with it their control over the Northern Pacific, would get back a ratable proportion of Great Northern and Northern Pacific stock. This would leave them jointly interested in both roads without a controlling interest in either. At the readjustment conference which followed shortly after the announcement of the Supreme Court, the Harriman representatives protested against the proposed plan of redistribution as an evasion of the true intent of the decree, and being overruled by the Hill-Morgan interests, Mr. Harriman and Mr. Pierce, acting as trustees for the Oregon Short Line, an appendage of the Union Pacific, began, on April 3, proceedings in the United States Circuit Court in St. Paul asking the Court to direct the Northern Securities Company to return to the original shareholders of Northern Pacific stock the shares exchanged by them for Northern Securities stock instead of an equivalent of stock in both roads. The purpose, of course, was to enable the Union Pacific interests to secure control of the Northern Pacific road and was a renewal of the old fight which had been temporarily suspended by the truce resulting from the organization of the Northern Securities Company.

Both parties were represented by an array of counsel which for brilliancy and numbers even exceeded that which appeared in the case before the Supreme Court, and the legal contest which ensued was one of the sharpest of recent years.

The chief contention of the Harriman interests was that the restoration to each shareholder of the original shares which he had exchanged for Northern Securities stock was the most logical and reasonable scheme, and seemed to be most in accord with the decree of the Court and the principles of natural justice. It must be admitted that it looked more nearly to the reestablishment of the *status quo*, which, it would seem, should have been the chief end to be kept in view in effecting the readjustment. Moreover, it was contended that redistribution according to the Hill-Morgan plan

would be merely to continue their control over the Northern Pacific and Great Northern roads which it was the purpose of the decree to prevent.

The contention of the Hill-Morgan shareholders was that the return of the stock on the basis of the plan proposed by the petitioners meant the return to the Harriman people of a majority of the stock of the Northern Pacific Company, the effect of which would be to put in the hands of the Union Pacific Railroad and the Oregon Short Line the absolute control of the Northern Pacific, a parallel and competing line. Furthermore, the right of the petitioners to ask for intervention of this kind was denied. Having participated in the acts of the Northern Securities Company, which had been declared illegal, they now sought from the Court preferential treatment at the expense of the innocent. "The shares Harriman put into this corporation," said Mr. John G. Johnson, of counsel, "have become merged and their identity is lost and who can identify them?" "Are there any other marks on them to show which ones were put in by Harriman?" "There have been 1800 transfers of stock and no one knows where the individual shares are." The United States was not a party in this suit but through the Attorney-General interposed an objection against the right of the Court to intervene, stating that it neither admitted nor denied the allegations of the petition but stood on the decree as affirmed by the Supreme Court and was only concerned to see that it was faithfully observed by the defendants according to its terms.

The Court refused to intervene in the matter, chiefly on the ground, as reported, that the decree was wholly prohibitory, only enjoining certain things to be done, viz.: the voting of stock and the acceptance of dividends, and so long as these things were not done, further action by the United States was unnecessary. That is to say, the Circuit Court was concerned only with the observance of the decree and not with the manner of the distribution of property among its stockholders. It being intimated that this was a matter within the jurisdiction of the Courts of New Jersey no time was lost by those concerned in resorting thereto, and application for an injunction to prevent the execution of the Hill-Morgan scheme of distribution was filed before Vice-Chancellor Bergen at Jersey City by the Continental Securities Company.

Whether in instituting these proceedings it was acting for the Harriman interests it is not quite clear; at least the latter disclaimed any knowledge of the suit. On April 25th, the application for the injunction was denied. Resort was then had to the United States Circuit Court for the District of New Jersey, and Harriman, Pierce and others secured a temporary injunction restraining the Northern Securities Company from carrying out its proposed distribution.

In the latter part of May elaborate arguments by distinguished counsel were heard by Judge Bradford on the application of the petitioners to have the injunction made permanent, but at the time this article went to press no decision had been rendered.

V. Conclusions.

The following observations and conclusions, based on a careful study of the various Federal cases arising under the Anti-Trust Act, and particularly the recent decision of the Supreme Court, are respectfully submitted:

First. That Congress by virtue of its power to regulate foreign and interstate commerce may forbid transactions of purchase and sale when in its judgment the result of such transactions is to confer upon two or more persons the *power* to destroy competition between competing railroads. In the exercise of this power it is immaterial whether the forbidden transactions are expressly authorized by State law or not, or whether the property involved is the stock of railroads engaged wholly in interstate commerce or not, or whether the said railroad companies are incorporated under the laws of the United States or of a State. Likewise it is immaterial whether the intent of the transaction is to restrain commerce or to create and develop new commerce, or whether the power to restrain is exercised or not, or whether if exercised the resulting restraint is reasonable or unreasonable, or whether direct and immediate or remote and incidental.

Second. The decision of the Court does not sustain, as is often asserted, the contention that Congress may regulate the acquisition, ownership and disposition of property of State corporations or any of the incidents relating thereto. What it does hold is that no State by virtue of its power to create corporations and regulate the

acquisition and ownership of property may endow any person or corporation with power to interpose obstacles in the way of free trade among the States.

Third. The Anti-Trust Act should not be interpreted as forbidding those reasonable restraints which were never objectionable at common law. In fact, it would seem as if a majority of the Court have come around to this view. But as the contrary interpretation stands as the law, Congress should amend the Act so as to restrict its application to unreasonable restraints. Early in the last session of Congress Senator Foraker proposed an amendment with this end in view, but it did not meet the approval of the administration and was, therefore, dropped. As the statute is now interpreted, it is too sweeping and if strictly enforced will work injury to legitimate business interests. It is doubtful if the framers intended to enact such a statute and the debates show unmistakably that the members of the Senate Committee on Judiciary, notably Senators Edmunds, Hoar and George, who, perhaps, had as much to do with the framing of the law as any other members, understood that it merely enacted the old doctrine of the common law relating to restraints of trade.

Fourth. The Eastern "mergers," embracing about 85 per cent. of the railway mileage of the United States, will not be disturbed by the Government. This comforting assurance was given by the Attorney-General in an interview following the announcement of the decision of the Supreme Court. He declared that the Government during the prosecution of the Northern Securities Company refused to give any heed to the contention of the defendants that all the railroad "mergers" in the country were on trial, but insisted that it was the validity of the Northwestern "merger" only that was in issue. Having succeeded in suppressing this one the Government did not propose to run amuck. No explanation was given why this particular one was singled out for prosecution and the others allowed to go free.

Fifth. The refusal of the Circuit Court to intervene in the Hill-Morgan scheme for redistributing the shares originally given in exchange for Northern Securities stock leaves the Northern Pacific road in the hands of Mr. Hill and his friends.

It thus happens that although the original act of the Northern Securities Company has been virtually suppressed, the "community of

interest" arrangement which the Securities Company was designed to protect, still survives. It is, therefore, questionable whether after all anything of permanent value has been gained by the prosecution and the resulting decree of the Court.

IV. The Immigration Problem

Problems of Immigration

By Honorable Frank P. Sargent, United States Commissioner of Immigration

PROBLEMS OF IMMIGRATION

By Honorable Frank P. Sargent,
United States Commissioner of Immigration

No question of public policy is of greater importance or affects so closely the interests of the people of this country for the time present and to come as that of immigration. It presents both a practical and a sentimental side. It cannot be dealt with as other public issues. It does not deal with the question of revenue. Its subjects are not inanimate like merchandise; they are human beings. They have aspirations, hopes, fears and frailties. The methods by which other laws are administered cannot, with regard to such a subject, be resorted to in the enforcement of the immigration laws. These laws, be it remembered, with one exception, are not laws of exclusion, but laws of selection. They do not shut out the able-bodied, law-abiding and thrifty alien who seeks to make a home among us, and to help at once his individual condition and the welfare of his adopted country. To such it is the part both of policy and good government, as well as of justice and fair play, to extend the hand of welcome. But it has long since been learned in the school of practical experience that the universal welcome which should be extended by a free people to those of oppressed nations, should be restrained by considerations of prudence and a regard for the safety and well-being of the country itself. Hence it has become an established principle of this Government to frown upon the efforts of foreign countries and of interested individuals and corporations to bring to the United States, to become burdens thereupon, the indigent, the morally depraved, the physically and mentally diseased, the shiftless, and all those who are induced to leave their own country, not by their own independent volition and their own natural ambition to seek a larger and more promising field of individual enterprise, but by some selfish scheme, devised either to take undue advantage of some classes of our own people, or for other improper purpose. That such a policy is a wise one, as well as obligatory upon the Govern-

ment of this great country, is too obvious to require elaborate argument.

The total estimated alien immigration to the United States, from 1776 to 1820 was 250,000. The arrivals, tabulated by years, from 1820 to 1903, aggregate 21,092,614, distributed among the foreign countries as follows:

Netherlands	138,298
France	409,320
Switzerland	211,007
Scandinavia, which includes Denmark, Norway and Sweden	1,610,001
Italy	1,585,477
Germany	5,100,138
Austria-Hungary	1,518,582
United Kingdom (Great Britain and Ireland)	7,061,710
Russia	1,122,591
Japan	64,313
China	288,398
Other countries such as Roumania, Greece, Turkey, Portugal and Poland	1,984,779

The total number of arrivals for the fiscal year ending June 30th, 1903, was 857,046, divided as follows:

Netherlands	3,998
France	5,578
Switzerland	3,983
Scandinavia	77,647
Italy	230,622
Germany	40,086
Austria-Hungary	206,011
United Kingdom (Great Britain and Ireland)	68,947
Russia	136,093
Japan	19,988
Other countries, such as Roumania, Greece, Turkey, Portugal and Poland	64,113

This is the greatest number that ever applied for admission in a single year. The nearest approach to this was in 1882, when 789,000 were admitted.

The character of the arriving aliens, however, during the past years differs greatly from that of 1882 and the years previous. Since the foundation of our Government until within the past fifteen years practically all of the immigrants came from Great Britain and Ireland, Germany and the Scandinavian countries and were very

largely of Teutonic stock, with a large percentage of Celtic. Fifteen millions of them have made their homes with us. In fact, they have been the pathfinders in the West and Northwest. They are an intelligent, industrious and sturdy people. They have contributed largely to the development of our country and its resources, and to them is due, in a great measure, the high standard of American citizenship.

The character of our immigration has now changed. During the past fifteen years we have been receiving a very undesirable class from Southern and Eastern Europe, which has taken the place of the Teutons and Celts. During the past fiscal year nearly 600,000 of these have been landed on our shores, constituting nearly 70 per cent. of the entire immigration for that year. Instead of going to those sections where there is a sore need for farm labor, they congregate in the larger cities mostly along the Atlantic seaboard, where they constitute a dangerous and unwholesome element of our population.

About 50 per cent. of the 196,000 aliens who came from Southern Italy during the past year were unable to read or write any language, and the rate of illiteracy among the rest of these Mediterranean and Slavic immigrants ranges from 20 per cent. to 70 per cent., while among the Teutonic and Celtic races the rate of illiteracy is less than 1 per cent. to 4 per cent. This change which has taken place during the past fifteen years has resulted in raising the average of illiteracy of all aliens from about 5 per cent. in former years to 25 per cent. at the present time.

What I desire, however, to call attention to, I have already indicated, and that is that in the enforcement of the immigration laws, since the subjects thereof are human beings, the treatment is two-sided. One-half of the work incumbent upon the Government has been done when those whose presence would militate against the interests of the people of this country have been detected and returned to their homes. Under the direction of the Bureau of Immigration all aliens are carefully examined by immigrant inspectors and surgeons of the Marine Hospital Service at the ports of entry for the purpose of rejecting those not admissible under the provisions of the immigration laws. During the past year more than 1 per cent. of those who applied for admission were rejected

and returned to the countries whence they came. The total number thus debarred during the year was 8,769, for the following causes, viz.:

Paupers	5,812
Afflicted with a loathsome or a dangerous contagious disease	1,773
Contract laborers	1,086
Convicts	51
For all other causes	47

In addition thereto 547 were deported who were found to be in the United States in violation of law.

There still remains the larger question, the question that more individually and vitally affects the interests of our people. What shall we do with the thousands that are admitted? Shall they be allowed to form alien colonies in our great cities, there to maintain the false ideals and to propagate the lawless views born thereof as the result of their experience—foreign not alone from their origin geographically, but foreign as well to this country in their ideals of human liberty and individual rights? To answer this question affirmatively is simply to transfer the evils which may be admitted to exist in foreign countries to our own shores. Immigration left thus is a menace to the peace, good order and stability of American institutions, a menace which will grow and increase with the generations and finally burst forth in anarchy and disorder. It is thus necessary, as a measure of public security, to devise and put in force some means by which alien arrivals may be distributed throughout this country and thus afforded the opportunities by honest industry of securing homes for themselves and their children, the possession of which transforms radical thinkers into conservative workers and makes all that which threatens the welfare of the commonwealth a means to preserve its security and permanency.

The Department of Commerce and Labor, through the Bureau of Immigration, should, in my judgment, furnish information to all desirable aliens as to the best localities for the profitable means of earning a livelihood, either as settlers, tradesmen or laborers. The States and Territories which need immigration should file with the Department such evidence of the advantages offered to aliens to settle in localities where conditions are favorable, so that the tide of immigration will be directed to the open and sparsely settled country. That the Bureau of Immigration should be the

medium of distributing the aliens is to my mind as much of a duty as it is to decide to whom the right to enter shall be given.

There are confined in the penal, reformatory and charitable institutions of the eleven States from Maine to Maryland, including Delaware, 28,135 aliens. The Irish, Slavs, Germans, Italians and English make up 85 per cent. of the total. There are 9,390 Irish; 5,372 Slavic; 4,426 Germans; 2,623 Italians, and 2,622 English. In the State of Pennsylvania there are 5,601 aliens confined in these institutions, 90 per cent. of whom are of the same five races in the following numbers: 1,772 Slavic; 1,218 Irish; 1,078 Germans; 673 Italians, and 423 English.

As I have already stated, the question has two sides. The other side is the humanitarian. It refers to the claims upon our consideration of alien arrivals as fellow beings. This side equally demands of a just and humane government the adoption of practical methods for such a distribution of these people as I have already indicated. On their own account, and in consideration of their ignorance and helplessness, they should be taken out of the great centers of population, where restricted space compels them to live together in a very unhealthful and unsanitary condition, and where competition for the means of existence forces them to prey upon each other and upon American citizens engaged in the same pursuits by a system of underbidding for work, a condition which reduces the cost of labor and lowers the standard of living. Such colonization, furthermore, by its consequent disregard of sanitary laws, threatens the physical health of the communities affected.

I cannot, in the brief space at my disposal, do more than merely advert to the principal features of this great governmental policy regulating immigration, a policy whose administration, to some extent, has been confided to my hands. I feel with every day of added experience the gravity of the interests involved, and that it calls for all that is best and highest in ability and moral stamina to accomplish the best results. It would be impossible for any right-minded man—it certainly has been to me—to undertake such a task without soon learning how much it exacts. In every moment of doubt or uncertainty, however, I have endeavored to be governed by that fundamental principle of our Government

which recognizes the sacredness of right and individual opportunity, whether the person affected has fortunately been born under the shadow of the stars and stripes, or whether, when the opportunity comes to him to exercise his own volition in selecting a home for himself and his children, he seeks that protection. Exact justice to all, irrespective of present or previous condition, is the rule by which I have endeavored to enforce the immigration laws, bearing in mind always that in any conflict of interests between my own people and those of other countries my primary duty is so to act that the balance will incline in favor of the citizens of this country, in whose service I am employed.

The Diffusion of Immigration

By Eliot Norton, Esq., New York City

THE DIFFUSION OF IMMIGRATION

By ELIOT NORTON, ESQ.,
Of New York City

Since January of 1850 to July of 1903, 18,998,383, or say nineteen million immigrants have come to this country, which gives an average of just about three hundred and fifty-five thousand a year for this period of fifty-three years and a half. Apart from this average, and taking the year from July 1st, 1902, to July 1st, 1903, by itself, the enormous number of eight hundred and fifty thousand, in round numbers, was reached. In the previous twelve months there had been, in round numbers, six hundred and forty thousand.

It is impossible to say whether these great figures will be kept up. A falling off from certain countries is sure to happen. Italy cannot continue for long to send us the number that she has been doing —over two hundred thousand last year. But whether the decreases that there may be from some countries will not be made up by increases from others is a question which does not permit of any absolute solution. Still it seems reasonably safe to prophesy that the yearly average of three hundred and fifty-five thousand will be kept up for another generation. In round numbers this will mean a total of thirteen millions of immigrants in the next thirty-six years. And judging from the records of the past about seven-eighths of these immigrants will be between fourteen and forty-five years old. About two-thirds of them will be very poor, and will have less than thirty dollars of money apiece. And the average of ignorance will be high; at least a fifth will not know how to read or write, while scarcely any will have the simple education that a boy or girl can get at the common schools in this country.

Whether this coming immigration will be of advantage to this country is not an easy question to answer. It is clear that our material development would have been slower had the large immigration of the past fifty years not occurred. Assuming that there is still enormous material development to be made, which is

quite certain, and assuming that to do so *rapidly* is of benefit (which I think is doubtful), then the coming immigration will be of benefit. No other way in which this immigration will be of benefit suggests itself to me.

Does this immigration bring with it dangers to this country? This I think can be easily answered in the affirmative. We are trying to govern a great territory with a large population by a system of government which demands as a prerequisite for continued success, certain political and moral beliefs, and an intelligent interest on the part of its inhabitants in public affairs. It is not sufficient to have a Constitution and members of legislatures. It is necessary that the moral and political truths which underlie that Constitution be commonly understood and highly valued. It is also necessary that legislators should be the political representatives of a people who, however divided by party politics, are united in an intelligent effort to realize in their government these moral and political conceptions; and that as such representatives they should at all times be animated by these truths and should try to embody them in practical legislation.

The introduction of nineteen millions of immigrants in the past fifty years who were wholly ignorant of our political notions has lowered the average political intelligence of the country, and by so far affected representative government to its detriment. This can be readily seen in some of our cities where great numbers of immigrants have collected, and where their political influence is most strongly felt. Here a representative and republican government no longer exists except in name and outward form. Tammany Hall is not the kind of government that this country was founded to give its inhabitants. And if its defense is that it is a government such as the majority of the people of New York are pleased with, then we see the absence in that majority of the moral and political conceptions necessary to sustain a republican form of government. We can see the same effects to a greater or less extent elsewhere; and as immigrants continue to come over, all of whom are ignorant of the political and moral truths which underlie our form of government, we are likely to see them increase. If there were only enough of such immigrants they would tolerate a mild tyrant in the White House as they do a mild city boss.

There is another danger I wish to mention. If one considers the American people from say 1775 to 1860, it is clear that a well-defined national character was in process of formation. What variations there were, were all of the same type and these variations would have slowly grown less and less marked. It needs little study to see of what great value to any body of men, women and children a national or racial type is. It furnishes a standard of conduct by which any one can set his course. The world is a difficult place in which to live, and to establish moral standards has been one of the chief occupations of mankind. Without such standards man feels as a mariner without a compass. Religious rules, laws and customs are only the national character in the form of standards of conduct. Now national character can only be formed in a population which is stable. The repeated introduction into a body of men of other men of different type or types cannot but tend to prevent its formation. Thus the nineteen millions of immigrants that have landed have tended to break up the type which was forming and to make the formation of any other type difficult. Every million more will only intensify this result, and the absence of a national character is a loss to every man, woman and child. It will show itself in our religions, rules of conduct, in our laws, in our customs.

These and other dangers which various observers have noted have led to some agitation for the passing of laws that would restrict immigration. Now to restrict immigration by a few thousand would not be of any particular value, and none of the laws which have been so far suggested would have a greater effect than this. There is no likelihood that any law could be passed that would materially reduce immigration—say cut it down one-half or even one-third—and before such a law could be passed a great many very intelligent and influential people would have to be convinced that the cutting down of our immigration would not be a detriment to this country. Personally I believe that these people in all good faith lose sight of the sure and lasting benefit through fear of a possible detriment.

We must therefore consider how to minimize the dangers of a yearly immigration of not less than three hundred and fifty thousand poor and ignorant people for an indefinite period. It is obvious that

the dangers which the immigration of the past has contained have been minimized by the great size of the country and the scattering of the immigrants over it. They are found in every State, from Maine to California, from Canada to the Gulf. This has enabled them to be brought in contact with the native born, and both have been modified by the process. The result has not been in any proper sense of the word "assimilation," but whenever immigrants have been diffused they have rapidly been educated so as to get along with the native American.

But this natural diffusion is ceasing, and we not only find that immigrants tend naturally to the cities but when there form colonies, so that we have "little Germanies," "little Hungaries," and "little Italies," and "Syrian colonies" and "Jewish colonies."

These colonies tend to perpetuate among the immigrants that ignorance of our laws, customs and political and moral notions that is one of their great dangers. Nor so long as they are denizens of these colonies do they in any sense of the word become Americans. They remain Italians, Germans, Russians and Hungarians. Obviously so long as immigration continues these colonies will tend to grow, and by their growth magnify the dangers already mentioned.

Since we cannot depend on the immigrants to scatter, means must be taken to diffuse them throughout the country and to localize them away from the great cities.

It might be supposed that this would be a very difficult thing to accomplish; it would be so if the immigrant himself objected, but for the most part the immigrant does not object provided certain requirements are met with. These requirements are as follows:

First. The place where the immigrant is to be located must be one where the climate is about such as he has been accustomed to, for otherwise he would immediately be dissatisfied and would drift to the cities.

Second. He must be assured of a reasonable livelihood in excess of what he would earn in his own country. He has come to this country because he thinks it is easy to make money, and, relatively to what he makes abroad, it is easy; consequently his hopes and expectations must be sustained.

Third. He must have his railroad fare paid to his destination, for he usually does not have the money to do so himself.

Fourth. The immigrant must not be wholly solitary; if he is set down in no matter how good a place to earn his livelihood, in no matter how pleasing a climate, he will be uncomfortable and tend to move away unless he can have a few of his own countrymen within comparatively easy reach.

These four requisites are easy to arrange for. Good management, a comparatively small fund of money, and an intelligent understanding of the immigrant are all that are needed.

There is a fifth and last requisite, to wit:

He must be protected both as regards a shelter over his head and food enough to eat while getting settled and until his livelihood begins coming in. This is not a serious matter where his livelihood begins shortly after arrival, but where he is expected to make it out of the earth, which will be the common case, he, and his family, if he has one, must be looked out for until the crop is sown and harvested, a period of not less than six months.

There are many land owners who will furnish immigrants with houses and will make very satisfactory terms with them for the use or ownership of land, but the keeping the immigrant and his family until the first harvest comes in is the difficulty in most cases. To overcome this obstacle a large fund is needed. Unless such a fund is raised little or nothing can be done. An excellent example of such a fund confined in its use to a particular race is seen in the Hirsch endowment and the colonization plans which have been carried out so satisfactorily in connection with this fund. The Salvation Army has also various schemes of colonization, but their desire to get the government to back them with money seems to me a mistake. The Society for the Protection of Italian Immigrants is trying to raise the necessary funds to establish large and small colonies of Italians.

These are the only efforts that I know of which are being made to diminish the damages attendant upon our large immigration by scattering the immigrants and getting them to settle away from the cities.

Selection of Immigration

By Prescott F. Hall, Secretary of the Immigration Restriction League, Boston, Mass.

SELECTION OF IMMIGRATION

By PRESCOTT F. HALL
Secretary of the Immigration Restriction League

The two factors of race migration and race survival have had most potent effects upon the world's history. But, while these factors are conspicuous when we look backward through the centuries, we often fail to appreciate the importance of their influence in the immediate past and in the present. The immigration question in this country has never had the attention paid to it which its importance entitles it, but has been sometimes the scapegoat of religious and racial prejudices, and always in recent years an annual sacrifice to the gods of transportation.

The causes of such indifference are not far to seek. In the early days of this country the people were busy with other matters. Immigration was small, and not especially objectionable in quality. Later, the doctrines of the *laissez faire* school, and the obviously narrow and prejudiced theories of the Know Nothing movement, helped to continue the existing status of free movement. More recently, a misapprehension of the doctrine of "survival of the fittest" has led many intelligent citizens to adopt an easy-going optimism, in many respects kindred to the benumbing fatalism of Oriental peoples. This misapprehension is caused by the fact that the doctrine of the "survival of the fittest" is usually stated in a catchy and condensed formula, with the authority of modern science, and accepted without critical understanding. The doctrine is that the fittest survive; fittest for what? The fittest *to survive in the particular environment in which the organisms are placed.* The only teleological valuation in this formula is the almost mechanical one of survival in time. Those who survive need not be the fittest for any other purpose whatsoever, except the continuation of life and reproduction. Were the citizens of the Netherlands inferior to the soldiers of Alva, or many of the victims of the French Revolution to those who slew them? Were the Polish patriots inferior to their Russian conquerors, or are the Finns inferior to those who are now

engaged in taking away their constitutional rights? Yes, but only in the matter of survival in time. But if the duration of human life on this earth is limited, as we are told it is by the same scientists who lay stress upon the "survival of the fittest," the mere success in duration for any race seems of no great value in itself, and may it not be worth while to consider other valuations as we go along, so that the whole world history shall be as valuable as possible from all points of view?

I have dwelt on this point because, while the value of artificial selection in breeding animals, in producing seedless fruits and new grains, in fact in nearly every department of life, is now generally recognized; and while some advanced persons are talking of regulating marriage with a view to the elimination of those unfit *for other purposes than mere survival;* yet most people fail to realize that here in the United States we have a unique opportunity, through our power to regulate immigration, of exercising artificial selection upon an enormous scale. What warrant have we for supposing that the Divine Power behind things does not intend human reason to be applied to these matters as well as hunger, steam, steel, and the lust for gold?

In such cases as the present an appeal is usually made to the fathers of the Republic, and to the argument that they recognized the right of every human being to migrate wherever he chose, and to produce as many children as he pleased, and, in general, to pursue happiness by living the kind of life that suited him. However the fathers may have been influenced by the French political theories of their time, they were practical men with much common sense, and it is by no means certain that if they were present to-day, the vastly changed conditions would not lead them to hold the views of the present article. Washington writing to John Adams in 1794, said:

> "My opinion with respect to immigration is that except of useful mechanics and some particular descriptions of men and professions, there is no need of encouragement, while the policy or advantage of its taking place in a body (I mean the settling of them in a body) may be much questioned; for by so doing they retain the language, habits and principles, good or bad, which they bring with them."

Can there be any question how Washington would feel about

excluding the thousands of immigrants who have recently come to create and to occupy the slum districts of our Northern and Eastern cities?

But even the prophetic vision of Washington could not possibly have seen the unparalleled change in the conditions of immigration from his day to ours. From 1821, when statistics were first kept, to 1900, a total of 19,115,221 immigrants has come to our shores; and the annual immigration has increased from 9,127 in 1821 to 857,046 in 1903. The modern immigration problem, however, dates from 1870; and it is necessary to emphasize this point because much of what is said in recent discussion ignores the profound change which has taken place in the character of immigration since that date. It may be frankly admitted that this country owes a large share of its development, its wealth, its power and its ideals, to the early immigration as well as to the best part of the later immigration; but any arguments based upon the effects of early immigration cannot be applied to the new comers as self-evident truths, for the data are by no means the same.

However much social prejudice there may have been against the Irish and German immigrants of the forties and fifties, and while even that immigration tended to diminish the native stock as I shall show later, it still remains true that prior to 1870 immigration was chiefly of races kindred in habits, institutions and traditions to the original colonists. Mr. Lodge said upon this point in addressing the Senate, March 16, 1896:

"It will be observed that with the exception of the Huguenot French, who formed but a small percentage of the total population, the people of the thirteen colonies were all of the same original race stocks. The Dutch, the Swedes and the Germans were simply blended with the English-speaking people, who like them were descended from the Germanic tribes whom Cæsar fought and Tacitus described. During the present century, down to 1875, there have been three large migrations to this country in addition to the always steady stream from Great Britain; one came from Ireland about the middle of the century, and somewhat later one from Germany, and one from Scandinavia, in which is included Sweden, Denmark and Norway. The Irish, although of a different race stock originally, have been closely associated with the English-speaking people for nearly a thousand years. They speak the same language, and during that long period the two races have lived side by side and to some extent have intermarried. The Germans and Scandinavians are again people of the same race stock as the English who built up the colonies. During this century then, down to 1875, as

in the two which preceded it, there had been scarcely any immigration to this country except from kindred or allied races, and no other which was sufficiently numerous to have produced any effect on the national characteristics, or to be taken into account here."

How marked the change in nationality has been since 1869 is shown by the fact that in 1869 less than 1 per cent. of the total immigration came from Austria-Hungary, Italy, Poland and Russia, while in 1902 there were over 70 per cent.; on the other hand, in 1869, nearly three-quarters of the total immigration came from the United Kingdom, France, Germany and Scandinavia, while in 1902, only one-fifth was from those countries. Or, to put it in another way: in 1869 the immigrants from Austria-Hungary, Italy, Poland and Russia were about one one-hundredth of the number from the United Kingdom, France, Germany and Scandinavia; in 1880, about one-tenth; in 1894, nearly equal to it; in 1902 three and one-half times as great. In 1903 the largest element in immigration was the South Italian with 196,117 souls, and the next largest was the Polish, with 82,343.

It does not, therefore, at all follow that because this country has been able to assimilate large numbers of kindred races in the past, it can in the future assimilate vastly larger numbers of races alien in customs, traditions and ideals. Immigration in 1903 amounted to over 850,000 persons. In 1923 or 1943 it may be two million a year, and the mere fact that the two million may bear no larger proportion to the total population of that day than the immigration did to the population in 1870 is no guaranty of our power of assimilating such a number of such races, especially when our total population will contain such a large proportion of these very races which are difficult of assimilation. Within the last year or two there has been a marked increase in the number of sailings from Europe, and especially from the Mediterranean ports. Recently, the White Star Line has established a Mediterranean service, the Cunard Line has a guaranty of 30,000 emigrants per year from Austria-Hungary, and a new line has been established between Odessa and New York; also the steamers which formerly ran between Austria and Central America now are to run to New York. There are increased sailings of the North German Lloyd and Hamburg-American lines, and the size of all new vessels has enormously increased. All these steam-

ship lines are in the business for profit, and immigrants, who require no loading and unloading, are by far the most profitable cargo. The thousands of agents of these lines all over Europe, Asia Minor and Northern Africa are bound to create all the business they can for their respective lines, and naturally they are concerned only with the selection of such applicants for tickets as will not certainly be rejected under the laws of this country.

The influence of these conditions upon the quality of immigration has been forcibly expressed by General Francis A. Walker, formerly Superintendent of the Census, as follows:

"Fifty, even thirty, years ago, there was a rightful presumption regarding the average immigrant that he was among the most enterprising, thrifty, alert, adventurous and courageous, of the community from which he came. It required no small energy, prudence, forethought and pains to conduct the inquiries relating to his migration, to accumulate the necessary means, and to find his way across the Atlantic. To-day the presumption is completely reversed. So thoroughly has the Continent of Europe been crossed by railways, so effectively has the business of emigration there been exploited, so much have the rates of railroad fares and ocean passage been reduced, that it is now among the least thrifty and prosperous members of any European community that the emigration agent finds his best recruiting ground.....Illustrations of the ease and facility with which this Pipe Line Immigration is now carried on might be given in profusion.....Hard times here may momentarily check the flow; but it will not be permanently stopped so long as *any difference of economic level* exists between our population and that of the most degraded communities abroad."

Speaking of the probable effect of recent immigration General Walker continues:

"The entrance into our political, social and industrial life of such vast masses of peasantry, degraded below our utmost conceptions, is a matter which no intelligent patriot can look upon without the gravest apprehension and alarm. These people have no history behind them which is of a nature to give encouragement. They have none of the inherited instincts and tendencies which made it comparatively easy to deal with the immigration of the olden time. They are beaten men from beaten races; representing the worst failures in the struggle for existence. Centuries are against them, as centuries were on the side of those who formerly came to us."

The main point to remember in regard to recent immigration is that much of it is not *voluntary* in any true sense of the term. The limits of this article do not permit a detailed statement of the facts supporting this allegation, but anyone who will read in the

report of the Commissioner-General of Immigration for 1903 the remarks of Special Inspector Marcus Braun, who has just been upon a tour of investigation in Europe, will find abundant evidence. The same thing was brought out in the investigations of our Industrial Commission. The race migration at present going on is not, therefore, even a "natural" movement. It is an artificial selection of many of the worst elements of European and Asiatic populations by the steamship companies.

It is significant that no general immigration legislation was found necessary until some years after the newer kind of immigration had begun to come hither. The first general immigration act was passed in 1882 and imposed a head tax of fifty cents; the contract labor acts were passed to prevent the immigration of the cheapest mining labor in 1885 and 1887; the general law was revised in 1891; an administrative act was passed in 1893; the head tax was raised to one dollar in 1895; and a general codifying act was passed in 1903, raising the head tax to two dollars. These Acts were passed in pursuance of the principle that the nation, as an attribute of its sovereignty or under the commerce clause of the Constitution, has a right to exclude or to expel from its borders any aliens whom it deems to be dangerous to the public welfare. This principle has been sustained by several decisions of the Supreme Court of the United States, the most recent one being in the case of Turner, the Anarchist.

So far from it being an established principle of our country to admit any and all persons desiring to come, it was early recognized that Congress has complete control over this matter, and Congress has established numerous classes of persons to be excluded. (1) An Act of 1862 prohibited the importation of Oriental "coolie" labor, and the later "Chinese Exclusion Acts" have rigorously enforced this principle. The Act of 1875 added (2) convicts, except those guilty of political offenses, and (3) women imported for immoral purposes. The act of 1882 added (4) lunatics, (5) idiots, (6) persons unable to care for themselves without becoming public charges. The Act of 1887 added (7) contract laborers. The Act of 1891 added (8) paupers, (9) persons suffering from loathsome or dangerous contagious diseases, (10) polygamists, (11) "assisted" immigrants, *i. e.*, those whose passage has been paid for by others, unless they

show affirmatively that they are otherwise admissible. The Act of 1903 added (12) epileptics, (13) persons who have been insane within five years previous, (14) professional beggars, (15) anarchists, or persons who believe in or advocate the overthrow by force or violence of the Government of the United States or of all government or of all forms of law, or the assassination of public officials, (16) persons attempting to bring in women for purposes of prostitution, (17) persons deported within a year previous as being contract laborers.

It is apparent that, however formidable the foregoing list of excluded persons looks upon paper, it practically is by no means an adequate protection to the country. Out of the 857,046 immigrants arriving in 1903, only 9,316, or a trifle over one per cent., were debarred or returned within one year after landing. In previous years the percentage has usually been less than this. The theory of the law is that the transportation companies will not sell tickets to persons liable to be excluded, and this undoubtedly keeps some undesirables away. But, after all, the present system of excluded classes utterly fails to attack the main problem of the proper selection of immigrants. In the Report of the Commissioner-General for 1903, the Commissioner at New York speaks of this matter as follows:

> "I believe that at least 200,000 (and probably more) aliens came here, who, although they may be able to earn a living, yet are not wanted, will be of no benefit to the country, and will on the contrary be a detriment, because their presence will tend to lower our standards; and if these 200,000 persons could have been induced to stay at home, nobody, not even those clamoring for more labor, would have missed them. Their coming has been of benefit chiefly, if not only, to the transportation companies which brought them here."

It is probable that most citizens would agree on a definition of "undesirable" immigration. At any rate, for the purposes of this paper, I shall call that immigration undesirable which is ignorant of a trade; which is lacking in resources; which has criminal tendencies; which is averse to country life and tends to congregate in the slums of large cities; which has a low standard of living and lacks ambition to seek a better; which fails to assimilate within a reasonable time, and which has no permanent interests in this country.

Now how far does our recent immigration fulfil this definition? It is to be remembered that in 1903 about three-quarters of it came from Southern and Eastern Europe and Asia; 65 per cent. of it

was destined for the four States of Illinois, Massachusetts, New York and Pennsylvania. Over 80 per cent. was totally unskilled or had no occupation at all. On the average, each immigrant had only $19 with him, and many only one or two dollars. Those from Southern and Eastern Europe admitted an illiteracy of 39.7 per cent., as against 3.9 per cent. for those from Northern and Western Europe. The true illiteracy was probably much higher for the former class, as they are known to be coached on this subject in view of the agitation for an illiteracy test, and whenever the writer has made practical examinations of immigrants he has found considerable misrepresentation in this regard. Taking up first the matter of distribution, we see a marked difference between the immigration prior to 1870, which built up the Northwest, and the races which now come to us. The census of 1900 shows that in the 160 principal cities of the country there were only $\frac{1}{8}$ to $\frac{1}{3}$ of the Scandinavians, less than $\frac{1}{2}$ of the British, and about $\frac{1}{2}$ of the Germans, as compared with over $\frac{3}{5}$ of the Irish, Italians and Poles and $\frac{3}{4}$ of the Russian Jews. Of the Poles in Illinois, 91.3 per cent. were in Chicago; in New York State, 75.5 per cent. were in New York City and Buffalo; in Michigan and Wisconsin, over $\frac{1}{2}$ were in Detroit and Milwaukee. Of the Italians in Illinois, 72 per cent. were in Chicago; of those in New York State, 79.8 per cent. were in New York City. Of the Russian Jews in the United States, 71.8 per cent. were in six States, as compared with 54 per cent. in 1890. Of the Russian Jews in Illinois, 84.2 per cent. were in Chicago; of those in New York State, 93.7 per cent. were in New York City; of those in Pennsylvania, 56.8 per cent. were in Philadelphia. Only 3.9 per cent. of the Poles, 4.4 per cent. of the Hungarians and 8.7 per cent. of the Russian Jews live in the Southern or Western States.

The Seventh Special Report of the U. S. Commissioner of Labor shows that Southeastern Europe has furnished three times as many inhabitants as Northwestern Europe to the slums of Baltimore, 19 times as many to the slums of New York, 20 times as many to the slums of Chicago, and 71 times as many to the slums of Philadelphia. In these same slums the illiteracy of Northwestern Europe was 25.5 per cent., that of Southeastern Europe 54.5 per cent. or more than double, while the illiteracy of the native American element in the slums was only 7.4 per cent.

The concentration of these large bodies of ignorant foreigners in the slums of our Eastern cities is a serious matter. Forming racial settlements, they do not tend to assimilate, but, as Washington predicted, keep to their native customs and standards of living. They cannot even read the newspapers, board of health notices and trade journals printed in their own language, and as a necessary consequence are slow to become acquainted with any other standards except those of their immediate neighbors. The census of 1890 seems to show that, taking an equal number of the foreign element and of the native element, the foreigners furnish 1½ times as many criminals, 2⅓ times as many insane, and 3 times as many paupers as the natives. It is not strange that there should be many foreign-born paupers when we consider that the South Italians bring on the average $8.84, the Hebrews, $8.67 and the Poles, $9.94 each, as compared with $41.51 brought by the Scotch, $38.90 brought by the English and $28.78 brought by the Germans. The statistics as to the nationality and parentage of dependents and delinquents in the various States are as yet too incomplete for very accurate conclusions, but it is evident that the present laws do not exclude the unfit. In the final report of the Industrial Commission, p. 967, it is stated that "the second generation, *i. e.*, the native children of foreign parents, furnish the largest proportion of commitments and prisoners of all race elements in the population." According to a recent investigation in New York State there were 13,143 persons of foreign birth in the public institutions of that State. Recent testimony of the New York State Lunacy Commission was to the effect that the State of New York is paying $10,000,000 annually for the support of the alien-born insane alone. Two of the largest hospitals in New York City have been obliged to suspend part of their activities on account of the burden of the foreign patients. The point of this is that things were not thus until the change of nationality took place. One of the managers of the House of Refuge in New York City writes:

> "I notice the large number of children that are placed in charitable institutions for no crime or misdemeanor, but to relieve their parents of their support. They are principally from Southern and Eastern Europe."

In 1902 the number of arrests of Greeks in New York City exceeded the entire Greek population of the city for the year 1900;

$\frac{1}{8}$ of the foreign whites in the United States over ten years of age cannot speak English, and of these 89 per cent. are over 20 years of age; that is to say, they are not likely to receive any schooling. Considering New York State alone, these persons who cannot speak English are chiefly Italians, Russian Jews and Austro-Hungarians.

In addition to perpetuating a low standard of living and a willingness to underbid native labor, this ignorance has a bad side politically. On the one hand, it means an indifference to civic matters, and a lack of knowledge of and interest in our institutions; and, on the other hand, it means bad material out of which to make citizens. The average percentage of British, Germanic and Scandinavian aliens among the males of voting age in 1900 was 11.5; of the Slav, Latin and Asiatic aliens, 45.3. Of these aliens, $\frac{7}{10}$ had been in this country long enough to be naturalized. This in the face of the great inducements to naturalization held out by political party leaders, and the fact that many municipalities insist on the employment of citizens only upon public works. It has recently been estimated that there are 50,000 fraudulent naturalization papers held in New York City alone. However this may be, it is evident that many of our present immigrants are not the stuff of which patriots are made. This is a highly dangerous condition in a country where we are once for all committed to the principle of government by force of numbers.

Some persons who are in favor of indiscriminate immigration admit, as indeed they must, the force of facts like those recited above; but they say the whole matter is a question of distribution. Let us get these people out of the cities, they say; let us put them upon the unsettled regions of Texas or Oklahoma, and the results will be very different. In regard to this plan several things may be said. (1) The immigrants will not go there of their own accord, as appears from what has been already said. Most of them cannot afford to go inland if they could. (2) The experience of the Hebrew Charities on a small scale shows that even where colonization is successful—and in many cases it has been an utter failure—it is altogether too expensive to be applied on a large scale. (3) If it could be applied to those already in the city slums, the slums would fill up faster than they could be bailed out, unless we adopt some further regulation of immigration as to newcomers. (4) It is, therefore, proposed to bar

aliens not destined to an interior locality. But it would require a policeman for each immigrant to see that he did not sell his ticket on landing, and that he actually went to his destination. (5) Even if our recent immigrants were able and willing to go to the West and South, *these States do not want them.* In 1896 every one of the associations formed to encourage immigration into the Northwest petitioned Congress for an illiteracy test for immigrants and stated that they did not want Southeastern European immigrants. A Government Commission in 1896 took steps to ascertain the wishes of the States in this matter by communicating with their governors, labor commissioners and other officials. Of 52 replies received all expressed a preference for native born or Northwestern Europeans, chiefly for British, Germans and Scandinavians. There were only two requests for Southeastern Europeans and these were for Italian farmers with money. Within a month the Immigration Restriction League has repeated the experiment of the Government Commission, and the thirty replies received to date are most instructive. Of the States desiring immigrants practically all wish native born, or immigrants from Northern Europe, Britain, Germany and Scandinavia. All are opposed to having the slums of eastern cities dumped upon them. In regard to immigrants not desired, three States desire no immigrants at all; two, no foreign born. Five desire no Southern and Eastern Europeans. Eight wish no illiterates. Of the rest, immigrants settling in cities, the Latin races, persons who cannot speak English, Asiatics, and in general any but the best classes of immigrants, are objected to.

Before considering remedies for the existing state of things, I wish to return to what was said at the outset and to emphasize the most important reason of all for further selection in admitting immigrants. The late Bishop Brooks, who was a large-hearted man if there ever was one, in a public address used these words:

> "If the world, in the great march of centuries, is going to be richer for the development of a certain national character, built up by a larger type of manhood here, then for the world's sake, for the sake of every nation that would pour in upon us that which would disturb that development, we have a right to stand guard over it.....We have a right to stand guard over the conditions of that experiment, letting nothing interfere with it, drawing into it the richness which is to come by the entrance of many men from many nations, and they in sympathy with our constitution and laws."

Now in order to develop our institutions in the spirit of those who built them up we must guard our power of assimilation, and not only refuse to take in immigrants whom we cannot assimilate, and refuse to take any immigrants in faster than we can assimilate them, but we must see to it that we ourselves and those whom we assimilate shall continue to exist and to hand on the torch of civilization to worthy successors. All statistical discussions of immigration and its effects are defective in two respects. First, under our census system the children of immigrants are classed as native Americans. Second, no account is taken of the children which are never allowed to be born. In other words, the question is not really between us and the immigrants now coming, but between their children and the children of future immigrants and our children. To put the matter concretely, the greatest danger of unselected immigration is its effect upon the native birth rate.

Take a teacher in New York City with a high standard for himself and his children. He has but two because he cannot give them what he wants to give them in education and the decencies of life. Compare him with a Southern Italian or a Syrian living not a mile away who has ten children, and who brings them up regardless of any high standard of living, any education they get being paid for by other people. Once on a time half of these would have died. Now, with our improved public sanitation, they live. Perhaps, as stated above, some of these children are supported at the public expense until they are able to go into a sweatshop. There can be no doubt which is the higher type of citizen or of family, yet the higher barely tends to perpetuate itself and the lower "survives" to five times the extent of the higher.

Of course the falling of a birthrate may be due to many causes which I have not time here to discuss. But in general it is caused by the desire for the "concentration of advantages," and one of the principal provocatives of this desire is the effects of immigration. Consider for a moment the typical town of a hundred years ago with its relatively homogeneous society. The young men drive the omnibus and tend the store. Everybody knows them, and, while not ranking with the judge, or the parson, or the doctor, they are in general as good as anybody. Now suppose a small factory is started and some of the village girls are employed there. For a time no great

change occurs. Then a number of unskilled immigrants settle in the town. Being unskilled they naturally take up the easiest kind of manual labor. At first they are regarded as curiosities. More come, enough to form a class. They naturally group more or less by themselves. They do not enter into the existing clubs and amusements of the town. After a time they constitute the larger part of the help in the factory. Being poor, they live in the cheapest location and in the most frugal style. The natives gradually withdraw from social contact with them, the girls dislike to work with them in the factory, the boys do not want to be with them in the fields and the mills. After such a caste system invades a town the natives are unwilling to marry, or, if they do marry, to have children, unless they can be sure of enough means to secure employment for their children in an occupation where they will not be classed with the immigrants. The girls no longer go out to service, but go into book-keeping, or certain kinds of stores; and the boys are sent to the High School or, if possible, to college. At any rate, the children of the natives seek only the so-called better grades of employment. After a time there is an invasion of French Canadians or Italians into the town, and the same process tends to operate in the case of the earlier immigrants.

That this is no flight of the imagination but an actual description of what happens is testified by many students of the question. The writer has personally inquired as to the cause of the small families in various parts of our Eastern States and has been repeatedly told by parents that this social reason was the controlling one in their own families. Dr. Roberts and Dr. Warne report the same thing in the mining regions of Pennsylvania. General Walker says:

"The great fact protrudes through all the subsequent history of our population that the more rapidly foreigners came into the United States, the smaller was the rate of increase, not only among the native population of the country as a whole, including the foreigners.....If the foregoing views are true, or contain a considerable degree of truth, foreign immigration into this country has, from the time it assumed large proportions, amounted not to a reenforcement of our population, but to a replacement of native by foreign stock."

The Industrial Commission also says in its report, p. 277:

"It is a hasty assumption which holds that immigration during the nineteenth century has increased the total population."

R. R. Kuczynski has shown that in Massachusetts the foreign born mother has two-thirds more children than the native-born mother, and three-fifths more children living.

Now in many discussions of this question it is said that the natives are displaced by the foreigners, but are "crowded up" into higher occupations. I do not believe that this can be shown to be true, even of the natives in existence at the time the process operates. Some are undoubtedly crowded up, some are crowded out and go elsewhere, many are crowded down and become public charges or tramps. But the main point is that the native children are murdered by never being allowed to come into existence, as surely as if put to death in some older invasion of the Huns and Vandals.

In this question of immigration we are dealing with tremendous social forces operating on a gigantic scale. How careful should we be, then, to turn these forces in the right direction so far as we may guide them. It is no doubt true that hybridization has often produced better stocks than those previously existing; and some infusion of Mediterranean and Alpine blood into the Baltic immigration of the last century may perhaps be a good thing. But if we were trying such an experiment on plants or animals would we not exercise the greatest care to get the best of each stock before mixing them? And has it not been said that human beings are of more value than many sparrows? The success of the American Republic is of more value to the world than the good of a few thousand immigrants, whose places are filled up at home almost before they reach this side of the Atlantic. It is by no means certain that economic reforms would not already have taken place in Europe which have been delayed because those countries have had the safety valve of emigration to the United States, and have thus been able to keep up the frightful pressure of militant taxation in their own domains.

If we are to apply some further method of selection to immigrants, what shall it be? The plan of consular inspection in Europe, once popular, has been declared impracticable by every careful student of the subject. A high headtax might accomplish something, but it is not a discriminating test, and hits the worthy perhaps harder than the unworthy.

Two plans have been suggested. One, more in the nature of a palliative than a cure, is to admit immigrants on a five-year proba-

tion, and to provide that if within five years after landing an immigrant becomes such a person as to be within the classes now excluded by law, whether the causes of his changed condition arose prior or subsequent to his landing, he shall be deported. There are various practical difficulties with such a plan, the chief one being that of identification, but, in view of the decision in the Turner case, such a plan would probably be held to be constitutional.

The other plan is to adopt some more or less arbitrary test, which, while open to theoretical objection—as any practicable test must be—nevertheless will on the whole exclude those people whom we wish excluded. It must be a definite test, because one trouble with the "public charge" clause of the present law, under which most exclusions now occur, is that it is so vague and elastic that it can be interpreted to suit the temper of any of the higher officials who may happen to be charged with the execution of the law. As I have elsewhere repeatedly shown those persons who cannot read in their own language are, *in general*, those who are also ignorant of a trade, who bring little money with them, who settle in the city slums, who have a low standard of living and little ambition to seek a better, and who do not assimilate rapidly or appreciate our institutions. It is not claimed that an illiteracy test is a test of moral character, but it would undoubtedly exclude a good many persons who now fill our prisons and almshouses, and would lessen the burden upon our schools and machinery of justice. In a country having universal suffrage it is also an indispensable requirement for citizenship, and citizenship in its broadest sense means much more than the right to the ballot. The illiteracy test has passed the Senate three times and the House four times in the last eight years. It has been endorsed by several State legislatures, a large proportion of the boards of associated charities of the country, and by numerous intelligent persons familiar with immigration matters, including the State associations for promoting immigration above referred to. This test has already been adopted by the Commonwealth of Australia and by British Columbia, and would have certainly been adopted here long since but for the opposition of the transportation companies.

It is no doubt true that many of the newer immigrants are eager to have their children educated, and that many of these children are good scholars. But this fact strikes us the more forcibly

because it is the one ray of hope in a dark situation. I do not know that anyone has ever claimed that these foreign-born children are superior in any way to native-born children, and the latter acquire the most valuable part of civic education by hearsay and imitation in their own homes, while the foreign born have their only training in the school. Furthermore, everyone admits the enormous burden of educating such a large mass of children, illiterate as to even their own language. This is in addition to the burden of the adult illiterates imposed on a country which already has its problems of rural and negro education. There is no doubt that an illiteracy test would not only give us elbow room to work out our own problems of education, but would greatly promote elementary education in Europe. Why should we take upon ourselves a burden which properly belongs to the countries from which these immigrants come?

Whatever view we may take of the immigration question there can be no doubt that it is one of the most important, if not the most important, problems of our time, and, as such, it deserves the careful study of all our citizens. We are trustees of our civilization and institutions with a duty to the future, and as trustees the stocks of population in which we invest should be limited by the principle of a careful selection of immigrants.

Immigration in its Relation to Pauperism

By Kate Holladay Claghorn, Tenement House Department,
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IMMIGRATION IN ITS RELATION TO PAUPERISM

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While it is plain enough that foreign immigration has some connection with the problem of pauperism since common observation and all the statistics available unite in showing that the majority of the recipients of our charity, public and private, are of foreign birth, it is equally certain on the other hand that pauperism is not something that the immigrant brings with him, but is the result of a considerable period of life and experiences here.

In 1903, even with the careful scrutiny now given by the immigration department, out of 857,000 foreign immigrants only 5,812, or less than seven-tenths of one per cent., were deported as likely to become public charges, and only 547 persons, or less than one-tenth of one per cent. of the immigration of the previous year, were returned within one year after landing as having become such.

In age distribution the immigrant group is the diametric opposite of the pauper group; the former consisting mainly of young adults, a group at the height of working power and ability for self-help; the latter of children and the old. This of itself indicates that much pauperism among the newly arrived is unlikely.

Furthermore, as a matter of fact, it takes some time for the immigrant to find his way to the poorhouse. The census of 1890 showed that 92 per cent. of the foreign-born male almshouse paupers had been in this country ten years or more, and their average length of residence here was probably much higher.

It is, in short, the immigration of past decades that is filling our poorhouses to-day. Of the foreign-born almshouse paupers enumerated in 1890, 83 per cent. were Irish, Germans and English—our older immigrants—while Italians, Austrians and Russians, the newer arrivals, were hardly to be found in almshouses at all. And this preponderance of the older immigrants in the almshouses was not merely due to their preponderance in the general population at that time. The ratio of paupers to the million of the same nation-

ality in the population at large was also far higher for the older than for the newer immigrants, being 2,163 for the English, 2,436 for the Germans, and 7,550, just three-fourths of one-per cent., for the Irish; while for the Italians it was only 817, for the Austrians, 779, and for the Russians, 586.

In view of the present uneasiness with regard to the changed racial character of immigration, and its great and increasing volume, it is of importance to learn, as far as possible, whether the newer Italians, Austrians and Russians will follow their Irish, English and German predecessors to the poorhouse in about the same proportion, or whether there are other elements at work to make the situation more or less favorable.

Taking the new immigrants by races, rather than by nationalities, the bulk of them are included in three groups—Italian, Slavic and Hebrew—which, together, now make up about two-thirds of our immigration year by year.

Assuming that the immigration for last year may be taken as typical, the following table indicates some of the group-characteristics which are significant with regard to probable pauperism:

Immigration for the Year Ending June 30, 1903.	Number of Immigrants.	Percentage of Males.	Percentage of Males who are			Percentage of Ages 14-45.	Percentage of those over 14 unable to read and write.	Money shown per capita.
			Professional.	Skilled.	Laborers.			
Italians	233,546	81	.41	15.00	74.00	84	43	$12.93
Hebrews	76,203	58	1.13	54.00	16.00	70	26	9.70
Slavs and Magyars:								
Bohemians and Moravians	9,591	61	1.43	44.50	32.00	75	1½	22.67
Croatians and Slovenians	32,907	89	.12	5.65	93.00	93	35	12.37
Lithuanians	14,432	75	.06	5.33	89.00	90	41	9.05
Magyars	27,124	75	.42	9.88	83.00	89	10	12.59
Polish	82,343	72	.08	6.10	85.00	88	30	9.54
Russian	3,608	80	2.28	16.80	69.00	85	31	25.06
Ruthenian	9,843	78	.08	2.10	96.00	92	50	9.40
Slovak	34,427	71	.06	5.60	88.00	87	21	12.00
Total, Italians, Hebrews and Slavs	524,024							
Total Immigration	857,046							

The Italians, it is seen, make up the largest single group, and in 1903 exceeded in number any single race group for any preceding year, with the sole exception of the Germans in 1882.

This group is peculiarly favorable as regards pauperism in respect to age and sex composition, with the highest percentage of males of any of the groups except the Croatians, and a high percentage of persons between fourteen and forty-five. But they are also the most illiterate of any of the groups but one—the Ruthenian—and the money shown is only $12.93 per capita.

It must be kept in mind, however, with regard to the poverty of immigrants as indicated in the immigration reports, that, for all classes of immigrants, the amount of money shown is probably far short of the money brought, as the immigrant from motives of caution will naturally exhibit only so much as he thinks necessary to gain him admittance.

The 74 per cent. of males classed as "laborers" were mainly farm laborers, from the country districts. The 15 per cent. skilled workers were, for the most part, from the towns, and were mainly barbers, carpenters, masons, shoemakers and tailors. The few "professionals" were musicians, sculptors and painters, and teachers.

The typical Italian immigrant, then, is the illiterate, unskilled laborer, with no capital but his sturdy arms and legs, and the poverty, illiteracy and lack of skill that characterize him are the qualities so often adduced in present-day discussion to show that our new-coming immigrants are on "the brink of pauperism." If so, a "brink" must be wider than is generally supposed—it takes the Italian, at least, so long to get over it.

The Italian immigrant comes here not only because of economic pressure at home, but because of a definite economic demand on this side for unskilled labor. In particular, the construction companies, now busily engaged in providing every city and town in the country with subways, trolley lines, power houses, mills, factories and skyscrapers, are absorbing this class of labor so freely that the Italian unskilled laborer, upon arrival, is quickly picked up and placed, and we hear nothing of him in relation to poverty or pauperism for some time.

A part of this good result must be, in fairness, ascribed to the padrone system, which, with all the evils it involves, at least makes the connection of laborer with employer much more rapid and certain than it could be without some such system.

An important factor in keeping the Italian laborer off the

hands of charity in his early period of residence is the great mobility of the newly-arrived Italian immigration. Up to the present time no statistics of departures have been kept, but it has been generally known that at the close of the busy season for unskilled work, or in a year of industrial depression, the return current to Italy is strong. In the past year it has been calculated that the number of east-bound steerage passengers was from 28 to 30 per cent. of the number of west-bound steerage passengers. The percentage for Italians alone would have been much higher than that, as they are by far the most mobile of any of the race groups in our immigration.

This very mobility is often regarded as an especial danger of Italian immigration; it should rather be regarded as a safety valve, or rather as a self-acting "law of settlement" which returns to their native communities those who are in danger of pauperism here, but who are able, in the home country, owing to the lower scale of prices and living, to maintain themselves until they are needed on this side again.

After a few years, however, the Italian immigrant saves up enough to bring his wife and children to this country, or to marry here, and then we begin to find him as a dependent.

As the Italian population is found mainly in the large cities—62 per cent. of them living in the 100 principal cities in 1900—the conditions among the Italian poor in New York City may be taken as fairly typical. Accordingly, to learn something about the emergence of dependence among the Italians, a study of Italian cases in the records of the New York Charity Organization Society for five city blocks, chosen for the density of their Italian population, was made. For the cases studied, the average period of residence in the United States for the head of the family was eight years and three months at the time of the first application for relief. In three-fourths of the cases the head of the family had been in the country five years or more. Only 6 per cent. had been in the United States less than one year. As to occupation, the male heads of families in the cases studied were about equally divided between the skilled and unskilled trades, in contrast to the proportion of one skilled to five unskilled in immigration; and about 5 per cent. of the applicants for relief were of the professional class, again in

contrast to the less than one per cent. of that class among Italian immigrants in general.

It is to be noted, furthermore, that these "professional" cases got into difficulties, not only in greater proportion, but in a much shorter time than the skilled and unskilled workers. In contrast to the eight years average residence shown for all cases taken together, the greater number of the professional cases were forced to apply for relief within a few months of arrival.

These followers of the professions were teachers, lawyers and musicians, and were, apparently, among the hardest to care for. One case, of a teacher, may be taken as typical of the fate of the educated, but poor, Italian in this country.

This man, a widower, with several children married, and in professional circles in Italy, came to this country with his two youngest sons, boys of twelve and fifteen. Unable to find employment in his own line, he undertook to support himself and one of the boys by rolling cigars. As he knew nothing about the trade, he was obliged to confine himself to the cheapest grades of the product, and, working night and day in his little tenement room, was able to roll, rather badly, about 200 cigars a day, for which his net earnings were forty cents. When he was at last obliged to apply for relief, he had been in the country only four months.

A prominent Italian who was applied to in relation to this case, stated that "as a rule, the educated Italian does not amount to much in this country."

In three-fifths of the cases studied, applicants for relief had relatives here, so that the placing of burdens upon those who are of blood kindred, which is one of the first principles of organized relief, could be, and, as a matter of fact was, applied in a considerable proportion of instances.

In somewhat less than half of the cases where there was a male head of the family, the wife followed some occupation, usually "sweat-shop" work—such as finishing coats, "pants" or skirts, or making artificial flowers. Where there was no male head the mother of the family was, naturally, more often found with an occupation.

In many of the families the older children were employed, but not so frequently as might, perhaps, have been expected. Less

than one-quarter of the cases studied showed employment of children. The boys occupied were in factory work of some kind, or were boot-blacks or newsboys—none were in outdoor, unskilled labor. The girls were in factories, or did sewing at home, like their mothers.

In cases where family relations were unbroken, the causes of need were mainly sickness and lack of work. The typical case may be pictured something like this: The man of the family, with his wife's aid, has been earning just enough to live on, and lay up a little something besides. A period of unemployment, or an illness, has drawn upon the little hoard until it is exhausted, and then appeals are made for food, for coal, or for payment of rent. In a large proportion of these cases, after a brief period of relief-giving, the head of the family finds work, or the sickness comes to an end, and the family is on its feet again.

An encouraging feature of the situation is that few cases were shown where the cause of need was shiftlessness or laziness, or the "beggar spirit," and almost none in which drunkenness appeared as a factor.

The moral causes of Italian dependence are of another kind. Many of the cases studied were of families broken up by the desertion of husband or wife, by the separation of husband and wife, or by the imprisonment of the husband for some offense or other, leaving his wife and children a burden on the public. Many of these cases of desertion seemed to be due to sheer inability of husband and wife to get along peaceably together. In one of the cases where the family was in distress owing to the imprisonment of the husband, the offense for which he was sent up was that of choking his wife in a fit of anger. In other cases, the man cannot endure his wife, or his wife's relatives, and simply vanishes, to find peace in his own way. In still other cases, a man with a wife in Italy takes another in this country, and, on the appearance of wife number one on these shores, finds it convenient to disappear, leaving both wives and sets of children upon public care.

This easy throwing off of family ties is attributed by Italians largely to the influence of the new country upon the immigrant. At home, the church does not permit divorce, and holds the man fast to his marital duties: on this side, the grasp of the church is loosened, and, for the immigrant, there is no organized body of

social opinion to take its place in restraining him from taking advantage of what he conceives to be the privileges of a "land of liberty."

A feature of Italian dependence, usually regarded as especially characteristic, is the large number of commitments of children asked for. This has been taken to indicate in the Italian lack of parental affection, and the presence of the pauper spirit.

In justice to them, however, it should be said that in the cases studied, three-fourths of the instances where commitment of children was asked, were in families which were already broken up, because of desertion, or for the more creditable reason of death of husband or wife. And it should also be said that Italian parents are in general unwilling to part with their children permanently, or to have them placed out in distant homes, but want them near at hand, where they can be visited, and want them to return home as soon as they are able to help maintain themselves.

The Slavic group cannot, like the Italian, be considered as a whole. Reference to the table given above shows that the group includes a number of sub-groups, of more or less widely differing characteristics, from the Bohemians and Moravians, with their low percentage of males, and persons between fourteen and fifteen, and high proportion of literacy and money per capita, to the Ruthenians, Lithuanians and Croatians, with their high degree of illiteracy and poverty, and large proportion of adult male unskilled laborers.

These people, however, are alike in one respect, and also like the Italians—the high proportion shown of unskilled laborers or peasant farm laborers from country districts. There are few representatives of the cities among them.

Their destinations, too, are as diverse as their kinds. Some of the sub-groups mass themselves in special regions of two or three States, others scatter widely; some are found in the cities, others in the country, or in small towns. It is, then, impossible, without a study of each people in each center of aggregation, to give a comprehensive or detailed account of their conditions as to pauperism. The most that can be done in the present space is to show briefly some of the salient features of the main groups.

Taking the immigration report of 1903 as some indication of their destination it is seen that all of the various Slavonic groups

go in large proportion to Illinois and Pennsylvania, to work in the mines and mills of both States. Many of those who go to Illinois, however, find their way to Chicago, where they enter the sweat-shop industries characteristic of foreign life in our large cities. Many Croatians and Slovenians go to Minnesota and Missouri, to the mines; a considerable number of Lithuanians were found headed for Massachusetts, and of Slovaks to New Jersey. Ohio also claims a considerable proportion of several of the groups, for manufactures and farm labor.

None of the sub-groups, however, is so generally scattered as the Poles, by far the largest of them numerically, who are found en route to nearly all of the States, to become, with equal readiness, coal miners in Pennsylvania, steel workers in Illinois, farm laborers in Connecticut and Massachusetts, and, in surprising numbers, farm owners in these same States, where they are bringing back to productiveness the farms abandoned by native-born owners in the mad rush for the cities and the more fertile West.

Of these various classes and kinds, the city groups, engaged in sweat-shop work, suffer the effects of the sharp competition in that line of occupation, and fall into temporary distress from which they have to be helped out.

The farm laborers apparently have no difficulty in making their way, and there is practically no occasion for charitable aid toward them. It is from their ranks that the farm owners are recruited, and the fact that it is comparatively easy to pass from one class to the other seems to show that the Slavic farm laborer's condition is in general a good one.

The Slavic mine and mill workers are still another class—to general thinking the typical Slavic immigration, whose coming is felt as a danger. The situation of these workers is peculiar in many ways. Take the anthracite coal miners as an instance. To three Pennsylvania counties one-tenth of the entire Slavic immigration into the United States is called, whether by the general expectation of employment, or, as is claimed by some, directly by the employers, who want to keep on hand more men than they can employ continuously, in order to lower the rate of wages, and break the power of the unions. In this restricted district, with thousands of new recruits pouring in every year, with labor disputes constantly arising, with

ups and downs in the market for the product of the mines, there are long periods of unemployment for a considerable proportion of the miners.

It is not surprising to learn, then, that in the three anthracite counties the number per thousand of the population receiving outdoor relief is about three times the general average for the State.

This is by no means, however, due entirely to direct economic pressure. Some of the excess is due to what may be counted as an incident of the industry, and in that sense an economic cause—the accidents characteristic of coal mining, which leave women and children to be cared for by the public.

Another factor is the intemperance so conspicuously absent in the Italian. The Slav miner is a hard and ferocious drinker, and this habit must inevitably have its effect on the rate of pauperism.

There does not seem to be, however, much distress due to desertion. In general the mine workers[1] are said to work hard for the maintenance of their offspring, and are anxious to clothe and feed them well.

Finally, it is interesting to note, as a suggestion with regard to pauperism generally, that one careful observer of the situation attributes a great part of this high rate of pauperism to political influence in the giving of charity. Roberts shows the present rates of persons relieved for Coal Township to be 22.8 to the 1000, while for Schuylkill County it is only 7.3 to the 1000, and says further: "Three years ago the latter had about the same proportion as the former, but in the last few years the Taxpayers' Association of Schuylkill County took the list of outdoor relief in hand and thoroughly purged it of its abuses, and, without working injury to the worthy poor, succeeded in reducing the number 50 per cent., and the expenditures were cut down from $40,000 to $25,000."[2]

The remaining class of our newer immigrants, the Hebrews, differ in certain important respects from both the Slavs and the Italians. The bulk of immigration of this people is inconsiderable—less than one-third the number of Italians in 1903, and only about nine per cent. of the total immigration; but they come almost entirely by

[1] Roberts, Anthracite Coal Communities, p. 300.
[2] Roberts, Anthracite Coal Communities, p. 142.

reason of economic and social pressure at home, without any special economic demand on this side for their services, and they settle in an abnormally high proportion in two or three of our largest cities. Reference to the table shows a comparatively small proportion of males, but a high percentage of persons between the ages of 14 and 45. A small proportion of old people makes early pauperism unlikely, as only five and one-half per cent. were forty-five and over. The percentage of illiteracy is not high, and is less important even than the figures would show, as the illiterate are mainly women, whose lack of education would have no significance in the economic struggle, but the amount of money shown was only $9.70 per capita. Again it should be remembered, however, that not all the money brought is shown, and the Jews, being an especially cautious people, would be less likely than the Italians to show all they had.

The Italians and Slavs come mainly from country districts; the Jews, owing to the peculiar conditions fixed for them in their own countries, largely from cities. Another contrast is found in the range of occupations; the Hebrews showing over one per cent. of the males belonging to the professional class, and fifty per cent. to the skilled class, while only fifteen per cent. were classed as laborers. The skilled workers were mainly clerks, carpenters, painters and glaziers, shoemakers and tailors. The last class, the tailors, was the most numerous, making up about two-fifths of the male skilled workers, and twenty-one per cent. of all male arrivals. Five per cent. of the male arrivals were classed as "merchants," meaning small traders, peddlers, etc.

The typical Jewish immigrant, then, is of the small trading and artisan class of the towns, and finds his natural habitat in the cities on this side. As there is no crying demand here for the work the Jewish immigrant can do, the labor market in these lines being already well stocked, he is obliged to pick up whatever he can, and usually finds his way into the sweat shop, or starts out as a peddler, in competition with thousands of others, as poor and as eager for work as himself.

Owing to this great economic pressure, it would naturally be expected that the Jewish immigrant should have recourse to charity sooner than some other classes of immigrants. The report of the United Hebrew Charities of New York for 1901 showed that forty

per cent. of the new applicants for relief in that year had been in the country less than one year. It is encouraging to find, however, that this early recourse to relief does not mean an early retreat to the almshouse, or, apparently, the beginning of a permanent burden on private charity. It was stated in an article on Jewish Charities, published in the ANNALS OF THE ACADEMY in May, 1903, that, out of a Jewish population in Greater New York approximating 600,000, there were only 17 Jewish paupers on Blackwell's Island. As to private charity the same writer states that, of 1000 applicants for relief at the United Hebrew Charities in October, 1894, 602 had not applied for assistance after December, 1894, and of the remainder, only 67 families were dependent in any way on the Society in January, 1899. In other words, over ninety-three per cent. of the cases had become independently self-supporting.

According to the Report of the United Hebrew Charities for 1901, the main causes of need appear to be sickness and lack of work, as with the Italians. These two causes run into each other, indeed. When work is not plentiful proper provision cannot be made for sickness, while sickness, on the other hand, exhausts not only savings, but vitality, besides throwing the worker out of employment, so that securing employment subsequently is more difficult. More than half of the cases were distinctly of this nature, while a considerable proportion of the remainder involved these causes.

In these cases, as well as among the Italians, there seems to be a general absence of moral causes of need, and, perhaps, to an even greater degree, a conspicuous absence of drunkenness as a cause, or of thriftlessness and shiftlessness.

Among the Jews, as among the Italians, we find a considerable proportion of cases of deserted wives, and requests for commitment of children. But here the cause seems rather another variety of the purely economic cause. Family affection and loyalty are so strong among the Jews that when the Jewish husband leaves his family, or the Jewish parent of either sex asks commitment of children, it is usually through sheer inability to earn the bread necessary to fill all the mouths.

The general conclusions to be drawn with regard to the newer elements in immigration, as a whole, seem to be, first, that among them the unskilled worker gets along better than the skilled, and

the illiterate than the literate. This is not to say that skill and education are in themselves a handicap in the industrial contest, or that all racial groups with a large proportion of illiterate, unskilled labor get along better than all those with a high degree of literacy and a larger proportion of skilled labor.

The industrial success of any group in this country depends upon its adjustment to conditions of demand here, and some of the race groups seem able to find suitable openings for skill and education.

But on the whole there is more chance for the newcomer into any social aggregation to find foothold if he is willing to begin at the bottom, and in this country in particular there is less demand for skilled labor from outside, owing to the fact that the present inhabitants are willing to follow those lines of work themselves, but are unwilling to occupy themselves in unskilled labor. On the other hand, the skill, and especially the education of the newer European immigrant, have been directed along lines that do not suit American conditions. In the evolutionary phrasing, undifferentiated social elements can more easily adapt themselves, by specializing, to fit a new environment, than can the elements which have been already differentiated to fit a former environment.

Any restriction of immigration, then, that is based on an educational qualification, would be meaningless with respect to the growth of pauperism. Such a qualification would, among the newer immigrants at least, let in the class which, though small, is the most difficult to provide for, and would keep out the class that can best provide for itself.

The next conclusion to be drawn with regard to the newer immigration is that it relieves us in large proportion of that part of pauperism due to drunkenness, as the Italians and Hebrews, who make up three-fifths of the number, are temperate people.

The following table not only shows the importance of the drink habit as an accompaniment of pauperism, but also confirms the conclusions already arrived at as to the respective tendencies of the different race elements in this regard:

Proportion of cases due to drink for	Percentage of 7,225 C. O. S. cases (5).	Percentage due to intemperate habits of some member of family.	
		29,823 C. O. S. cases (6).	8,420 almshouse paupers (7).
Irish	23.62	37.84	44.55
English	16.93	25.07	40.75
[3]American	15.14	23.89	34.95
German	7.83	20.16	27.88
Italian	5.60	3.42	9.09
[4]Russian and Polish	3.24	6.73	12.96

Again, the causes of need among the newer immigrants appear to be more largely economic than moral. The following table shows statistically how far this conclusion is justified, and how the newer immigrants compare with the older immigrants:

Proportion of 7,225 C. O. S. cases due to various causes (8).	Irish.	English.	American.	German.	Italian.	Russian-Polish.
Misconduct	31.63	29.25	27.99	16.95	18.67	11.62
Drink	23.62	16.93	15.14	7.83	5.60	3.24
Shiftlessness or inefficiency	5.78	7.12	9.19	7.48	8.41	7.09
Crime and dishonesty	1.58	2.36	1.40	.58	3.73	
Other misconduct	.65	2.84	2.26	1.06	.93	1.29
Misfortune	66.26	68.15	68.84	79.28	78.51	85.13
No male support	5.07	3.16	4.11	4.27	6.54	6.45
Lack of employment	18.87	24.68	24.57	28.62	30.85	23.87
Sickness or death	19.80	22.94	20.31	22.92	16.82	25.16
Other misfortune	22.52	17.37	19.85	13.47	24.30	29.65
Not classified	2.11	2.60	3.17	3.77	2.82	3.25
	100.00	100.00	100.00	100.00	100.00	100.00

It may be of interest to see how the newer immigrants compare with the older as to deserting their wives and families. The following percentages[9] of 8,028 charity cases show a fairly uniform rate, except for the Russians and Poles, which is more than double that of any of the others:

[3] Includes native born of foreign parentage.
[4] Includes Hebrews and Slavs.
(5) Warner: American Charities, p. 44.
(6) Koren: Economic Aspects of the Liquor Problem, pp. 76–7.
(7) Op. cit., pp. 114–15.
(8) Compiled from Warner: American Charities, Table viii.
[9] Compiled from Warner, American Charities p. 53.

	Irish.	English.	American.	German.	Italian.	Russian-Polish.
Married	44.00	45.82	46.63	58.40	60.68	62.50
Deserted wives	6.00	7.78	7.00	5.53	5.98	15.34

Worthy of note, besides, in the above figures, is the steadily increasing proportion of applicants for relief living in normal family relations, as we pass from the Irish, at the head of the older immigrants, at the left of the table, to the Russians and Poles closing the list of the newer immigrants at the right. This indicates the more occasional, temporary, or emergent nature of the need of the newer immigrants, the true pauper being shaken loose to great degree from family ties.

The same thing is shown by the following percentages[10] of numbers of persons in families asking aid in 4,176 Boston and New York charity cases:

	Irish.	English.	American.	German.	Italian.	Russian-Polish.
One to two in family	34.96	36.69	35.71	29.49	18.33	13.27
Three to five in family	46.38	49.19	47.02	50.49	51.36	49.99
Over five	18.62	14.14	17.27	20.11	30.26	36.69

It will be seen here that English, Americans and Irish lead in proportion of what may be called fragmentary families—one person, or husband and wife, deserting or deserted by their children—and that the Italians and Russians lead in large families, while the proportion of medium-sized, but normal, families is very much the same for all of the groups.

In the above tables it is to be borne in mind that under the heading "Russians and Poles" the unlike race groups, Slavs and Hebrews, are united. We cannot, then, draw conclusions for these peoples separately, but only for the newer immigration as a whole.

The main source of danger as to pauperism from our immigrants of to-day is in the severe economic pressure they are subjected to. While the unskilled laborer finds immediate employment on arrival here, and is thus kept for the time being from the need of charity, it is at such a low wage that there is little margin for provision

[10] Compiled from Warner, American Charities, pp. 50, 51.

against the accidents and enlarging needs of life—sickness, unemployment, increase of family cares, old age and death. Is this pressure actually so great that these needs cannot be met, and that our newer immigrants, after a period of ups and downs, during which they are helped along by temporary relief, must in large proportion find their way to the poorhouse at last?

There are two influences at work—the one beginning as the other slackens—to stave off this fate: in the early period of the new immigrant's life here, a phenomenal thrift that enables him to save money from a wage that seems hardly sufficient to sustain life; in the later period, a gradual raising of the standard of life that, without diminishing the determination to get on in the world, shifts the stress of effort from saving to earning.

As a result of these tendencies a rapidly growing prosperity is to be seen among these newer peoples.

The Italians are for the most part still in the saving stage, but their savings are surprisingly large. It has been estimated that the Italians in New York hold property to the amount of $60,000,000 and over, a value which is, however, far below that of the Italian colonies of St. Louis, San Francisco, Boston and Chicago.[11]

The amount held by Italians in savings banks alone in New York is estimated at over $15,000,000, and the savings sent home to Italy are sufficient in many cases to set whole villages on their financial feet again.

The Jews are under greater economic pressure than the Italians, but, on the other hand, they have a greater and more intense personal ambition, which is always pressing and pushing to lift them upwards. The increase of wealth on the East Side in New York is as noteworthy as the increase in poverty. A considerable proportion of the tenements of the city are owned, one or two in a holding, by Jewish immigrants, and the amount of savings laid away in the banks of the East Side is surprising.

Even the Slav miners of the anthracite region show a considerable financial surplus. In four towns of the mining region it has been estimated that the Slavs own $2,500,000 in real estate, or about $100 per capita of the Slav population in those towns. In one town they owned 39 per cent. of the homes, the values ranging from $350

[11] Gino C. Speranza; "Charities," May 7, 1904, p. 462.

to $7,000, and averaging $953. The payments on land are prompt. There is, in addition, much money sent home, and the banks are doing well by reason of Slavic custom.

Furthermore, the standard of life is undoubtedly rising among these people. They live in better houses than ten years ago, and in dress and other outward tokens are showing the effect of contact with people in a more advanced social stage.

While this process of economic improvement is going on, however, with the newer immigrants, there are other influences at work that make in the direction of pauperism. Overwork, poor food, and life in the airless, sunless and crowded tenements of the city, or in the equally crowded and even more unsanitary dwellings of the mill- or mining-town—the conditions accompanying the early stages of the immigrant's progress—tend strongly to break down the physical health of the sturdy Italian or Austrian peasants, or even of the Jews, more accustomed to the unsanitary conditions of city life. An alarming increase of tuberculosis among the Jews and Italians in our large cities, the phenomenally high death rate of Italian children in the same, and of Slavic children in the anthracite region, seem to show that the tendency is already a strong one.

As a secondary result of enfeebled health, and as a direct result of overcrowding, there is the further danger of moral as well as physical breakdown, both in the first and second generation, and an emergence of the causes of pauperism which have been so far notably absent—drunkenness, vice and idleness.

In our large cities the Italians and Hebrews are learning to patronize the saloons, and are being drawn into the meshes of organized vice. There is no reason to think, however, that this tendency will spread through the mass of either people. In the history of immigration so far the race groups that have shown general intemperance here have brought it with them as a race trait; those who were temperate on arrival have, in general, remained so.

The drink difficulty, so far as the newer immigrants is concerned, is not so great that it cannot be in great part checked by municipal forethought.

It is in insuring conditions favorable to physical health, however, that the municipality or other form of local government has the most important part to play. Keep the immigrant population

in a fairly normal condition of health, and they will, of themselves, go far towards working out the rest of their salvation. And this can undoubtedly be done by intelligent municipal regulation, especially of housing conditions. The history of tenement house reform shows that the tenement house in itself has been responsible for much of the physical and moral degradation seen in our large cities. It is, indeed, impossible to calculate how great has been the social loss and waste, how heavy the additional burden of pauperism, due to the policy of allowing landlords to hive as many human beings as possible upon a given space of land, without regard to health or decency.

In country districts, also, housing conditions are of the utmost importance, although this has largely been overlooked in the great interest aroused in city conditions. In the anthracite region, for instance, a high disease rate and infant death rate among the Slavs, as well as some of the social and moral evils there prevalent, are certainly due in large part to the wretched general sanitation of the towns, to the relegation of the Slavs, as far as possible, to undesirable quarters in the towns, and to the "company houses"—the poorer ones at least—in which about sixteen per cent. of the miners are obliged to live.

Improvement in housing conditions has this special advantage as a means of social betterment, that its effects are relatively permanent. General sanitary laws as to cleanliness, disposal of refuse, etc., may be obeyed to-day and disregarded to-morrow; but if houses are once put up with adequate light and ventilation, if windows are once cut, court space provided for, sufficient distance from adjoining buildings secured, the height restricted, and proper plumbing installed—all this cannot be done away with in a day; and in fact, there is no great inducement to do away with it when the house owner has once made the investment.

There is, in short, no surer and more comprehensive means of raising the standard of life among the poor than by compulsory improvement of their dwellings. If rents in the crowded sections of cities are raised in the process, it is one inducement the more to the spread of population into more open, and cheaper, districts, thus relieving congestion in the older quarters.

Finally, there is a more or less remote danger of the emergence

of pauperism in the second generation of our newer immigrants, due to physical and moral deterioration from causes already mentioned. It is impossible to tell, at the present time, how near, and how serious, this danger will prove to be. On the one hand, we see influences at work to reduce the physical health of children, to relax family discipline, and to disincline them for entering into any but a small range of pursuits.

It cannot be said that the effects of our public school training on the children of immigrants is altogether fortunate. The ideals held up by the public schools to-day are too exclusively academic. The practical result of their teaching seems to be to turn the desires of children as far as possible from manual labor, and inspire them all with the ambition to be teachers, clerks, stenographers, attendants in stores, or at least factory workers. The young Italian boy will rather loaf on a street corner than go into unskilled manual work; and where opportunities are as crowded as they are in the lines he wants to follow, the chances are that he, and many like him, will loaf a long time, and learn many vices that are likely to lead to pauperism.

Much the same may be said of the Slavic child. The only set of immigrants for whom our public schools appear to be comparatively well adapted are the Hebrews, who seem to be able by their means not only to strive for but to find places in commercial or professional pursuits. There are indications, however, that the schools are now beginning to recognize this lack, and, by provision for manual training, and training in the domestic and useful arts, are making a beginning toward raising hand work to the level of esteem accorded to other matters learned in school. It is certainly a serious defect in a system of popular education that it can reach persons in one great sphere of economic life only by taking them out of it.

On the whole there seems no reason why the second generation of Italian, Slavic and Hebrew immigrants, as a body, should furnish more paupers than did the Irish, Germans and English. The original stock of the newer immigration has been shown to be rather less, than more, inclined to pauperism than the older; the same influences now at work on the second generation of the newer immigrants were equally at work to drag down the children of older immigrants.

While, however, the class of dependents of native birth and foreign parentage of the older immigration is in some respects more hopeless, and more troublesome to deal with than those of the first generation, the mass of it is small—so small that it has slight importance in statistics of pauperism.

Foreign pauperism, as a rule, ends with the first generation, and there is no reason to think that the newer immigrants will prove an exception.

Australasian Methods of Dealing with Immigration

By Professor Frank Parsons, Boston, Mass.

AUSTRALASIAN METHODS OF DEALING WITH IMMIGRATION

By Professor Frank Parsons
Boston, Massachusetts

From the first the Anglo-Saxon colonies of Australia and New Zealand have regarded the immigration problem as one of the most important that could engage the attention of their statesmen, affecting most vitally the public health and morals, the wage level and conditions of labor, freedom and civic life—determining, in fact, the quality of the materials used in the construction of their institutions and civilization.

Until well toward the middle of the last century, England looked upon her colonies as convenient dumping grounds for social refuse; receptacles for criminals and paupers. Later, the influx of colored aliens, yellow, brown and black, coming spontaneously or brought in by capitalists, became a matter of serious moment. Swarms of Chinese and masses of black Melanesian laborers, called Kanakas, picked up in the islands of the Western Pacific and taken to work on the sugar plantations of Queensland, carried with them a deplorable deterioration of the labor level and constituted a dangerous breach of social homogeneity and strength. The colonies needed immigrants to develop their resources, but such immigrants were worse than none. It was felt that the development of civic and social life on a high plane was more important than the working of mines, plantations and factories with cheap labor, or any other question of wealth production, and that immigrants unfit for free institutions and high civilization must be rejected, no matter how great the need for labor might be.

From these facts and this feeling, three strong movements resulted: First, an agitation that aroused enlightened public sentiment in England and put an end to the dumping of convicts and social rubbish in the Australasian colonies; second, the adoption by colonizing companies and the colonial governments of various plans of *scientific colonization* under which immigrants were carefully selected

for their fitness in character and industrial power and then assisted by free passage from Great Britain, or part payment of the passage money; third, the enactment by the Colonial Governments of a series of vigorous measures for the exclusion of undesirables, especially Asiatics and blacks.

The situation has greatly changed in the last half century, both as to the encouragement and the discouragement of immigration.

The convict problem in its early form has long since passed away. The children of deported convicts, for the most part, grew up to be reasonably good citizens. The badness was not in the blood, but a product of the social environment of the old world. Put a man in a glove-fitting tenement without air or sunlight, subject him to vicarious perspiration for ten, twelve or fourteen hours a day, making him sweat for the bread he eats and also for that which the leisured landlords eat, surround him with saloons and brothels, criminals and paupers, and pay him so little he cannot support a family decently nor hope to rise much in the world, and you prepare him and his children to graduate into the criminal class, or be easily forced into it under pressure of extraordinary want from illness or other special misfortune. Such human nature, lifted from the mire and carried to the open country often redeems itself. Away from the slums and other accompaniments of "civilization," close to mother earth with a chance to make a good living from the soil, in a country where stealing and hanging are near relations, the predatory and destructive instincts give way to creative and constructive activities and manhood conquers the beast. A perception of this civilizing effect of roominess, many miles of nature per capita, plenty of land, fresh air and sunlight for all, must be recognized as a rational element in what may be called the "criminal philosophy" of the early years, though it was a far less potent element than England's wish to rid herself of the noxious by-products of her civilization as easily as possible by sending her social sewage out to sea.

The early settlements in South Australia and throughout three-fourths of New Zealand were made by companies aiming at scientific colonization, and for many years all the colonial governments systematically gathered in selected immigrants. But as the colonies filled up, one after another ceased to offer free or part-paid passage, till now assisted immigration has been discontinued except in

Queensland and Western Australia. The latter confines its help to extraordinary cases, but the Queensland service is still of much value to persons who have been for six months or more in that colony, and who wish to bring out their relatives and friends from the old country. Such relatives or friends, nominated for assisted passage, must be of good character, must not have been convicted of crime, must be free from mutilation, deformity, bodily or mental defect, disease calculated to shorten life or impair physical or mental energy, and must have been vaccinated. If these conditions are fulfilled and the nominee is not over forty-five, a Government certificate for transportation will be issued on payment of from two pounds (£2) to eight pounds sterling (£8), according to age and sex. The full steerage rate is somewhat over thirteen pounds, so that the State assistance is a very material help in the transfer of a family.

The chief concern of the later decades and one that is as vital now as ever, is the exclusion of Asiatics and other undesirables who come by contract or of their own motion. The colonies have fought this sort of immigration by entrance fees and fines, limitation of the number of passengers to a given tonnage, educational tests and absolute prohibition. As soon as the colonies received the right of self-government, the work of exclusion began and has continued ever since with accumulating vigor. The Yankees of the South Pacific are determined to prevent race fissures, babel cities and debased admixtures in their commonwealth. They will not pollute the stream of life in the new world with the refuse of the old, nor dilute their civilization with inferior stock, nor lower the standard of comfort with low-grade labor, nor imperil their freedom and progress by the influx of immigrants unfit for self-government. They welcome immigration adapted to democratic institutions and 20th century civilization, but will not receive adulterated goods.

The exclusion laws are aimed chiefly at Chinese immigration, which is intensely obnoxious to all the Anglo-Saxon colonies of Australasia. The undesirable immigration from England was hard enough to deal with, but it presented no such tremendous and ineradicable difficulties as an invasion by masses of low-grade workers of a different race, impossible to assimilate, hopelessly alien in language, interests, ideals, morals and religion, tainted with the vices of

a degraded standard of life and inherently adapted to despotism rather than democracy.

The Chinese have no idea of becoming part of the community. They go to the colonies to earn a little money as small shopkeepers, servants, factory workers, etc., and then return to China. They do not bring their women. Out of 14,000 living in New South Wales in 1891, only 60 were women. The New Zealand Year Book for 1903 gives the number of Chinese in that colony as 2,792, of whom 31 are females. These immigrants have no family responsibilities, no social interests, no capital, no knowledge of English. They live in hovels and scorn sanitation. They are unclean, conceal contagious diseases from the authorities, and are a menace to the public health. They can live on next to nothing and save money on wages that would not support a white man and his family even at the slum level. They have no conception of free government and civic responsibilities.

As early as 1848 there were Chinese shepherds in Queensland, but the first important influx into Australia occurred a few years later during the rush to the gold mines of Victoria. The whites quickly took the alarm and for fifty years have been practically a unit on the policy of keeping out the yellow race. In 1855 the newborn Victorian State enacted that no ship should bring more than one Chinese to each 10 tons of its tonnage, and that a shipmaster must deposit £10 with the collector of customs for each Chinaman he brought. A similar law was passed by South Australia in 1857, and by New South Wales in 1861. Queensland began, or tried to begin, by imposing a special license fee on the Chinese working in the gold fields. But the English Colonial Office, though it had permitted the Victorian legislation and its copies, vetoed this Queensland bill and in a despatch to the Governor of the Colony, March 1877, laid down the principle that "exceptional legislation calculated to exclude from any part of Her Majesty's dominions the subjects of a State at peace with Her Majesty is highly objectionable." Queensland, however, evaded the rule by adopting an act similar to the Victorian law previously sanctioned by the Home Office, lowering the financial bar a little but encouraging good conduct and quick departure by providing that, if the immigrant left within three years without breaking the criminal law or receiving charitable aid, his £10 should be returned to him. This act England allowed to become law.

These laws were fairly effective. The incoming tide was checked and the outgo led to a rapid diminution of the Chinese population of the colonies. Victoria, for example, had about 42,000 Chinese in 1859, while in 1863 there were only 20,000 left. Public fear subsided and the exclusion law was repealed after being eight years in force. New South Wales also repealed her exclusion act after using it six years. From 1867 to 1881 the Chinese could go and come pretty much as they pleased outside of Queensland and South Australia.

But the yellow tide rose again in 1880 and '81 and in the latter year exclusion laws more drastic than those above mentioned were passed by New South Wales, Victoria, South Australia and New Zealand. The four acts were much alike,[1] the essence of them being that every Chinaman must pay an arrival tax of £10, and that only one could come for each 100 tons of tonnage in any ship. South Australia provided in addition that the Chinese immigrant must have been vaccinated.

Queensland left her Chinese tax at £10 and her tonnage ratio at 1 to 10 tons until 1884, when she found it necessary to raise the bars as the Chinese were jumping over the old fence in uncomfortable numbers. The arrival tax was lifted to £30 (about $150) absolute, payment not to be refunded on leaving the colony, and the proportion of Chinese immigrants was not to be more than one to 50 tons.

After this there was a lull until 1888. Then it was learned that nearly 4,500 Chinese had entered New South Wales in the previous twelve months. They were pouring into other colonies also. There was a panic. Henry Parkes, Prime Minister of New South Wales, telegraphed to England urging the Imperial Government to negotiate a treaty with China similar to that which had just been secured by the United States, but before diplomacy could be tried an emergency arose which drove the Colonial Governments to drastic measures for their immediate defense.

The emergency was brought by the steamer *Afghan*, which reached Port Philip in April, 1888, with 264 Chinese on board—250 more than her tonnage entitled her to bring under the Victorian law of 1881. Some of the Chinese passengers claimed to be naturalized British subjects and showed naturalization papers. These were alleged to be fraudulent and the collector of customs refused to allow

[1] Tasmania followed with a similar law in 1887.

any of the Chinamen to land. The *Afghan* then went to Sidney and there, with three other steamers carrying Chinamen, met a similar refusal. Parkes induced the House to suspend the standing orders and, in a few hours, passed a strong exclusion bill. The Senate rejected the measure. The Chinese, meanwhile, appealed to the Supreme Court and it held that those who were British subjects, or had previously lived in New South Wales, could land. The rest had to go away. About a hundred of them were somehow landed in New Zealand, which led to a brilliant executive order, erecting a medical wall against the Chinese by declaring the Far East and the Malay Archipelago to be *infected* countries. This gave the authorities power to detain in quarantine all ships coming from those regions. No use was made of this device however, as the drastic laws adopted by the Colonies soon after the *Afghan* incident made it unnecessary to resort to such medicinal inventions.

An inter-colonial conference discussed the situation in June, 1888, and passed resolutions urging further restriction of Chinese immigration by diplomatic action of the Imperial Government and by uniform colonial laws. It was recommended that Chinese passengers in any ship should not exceed 1 to each 500 tons; and that it should be made a misdemeanor for a Chinaman to go from one colony to another.

New South Wales was the first to act. With public opinion behind him, Parkes pushed through another exclusion bill, which became law in July, 1888, a few weeks after the conference. It raised the arrival tax from £10 to £100 and the tonnage per Chinaman from 100 tons to 300 tons. British subjects were exempted from the act but no Chinese alien could thereafter be naturalized. The penalty for breach of the law might be as high as £500. The act was assented to by the Home Office in spite of its scruples about legislation against specific nationalities, and the new law proved its effectiveness at once. In 1887 New South Wales had 4,436 Chinese arrivals; in 1889, the number fell to 9; and ten years later only 5 Chinese aliens entered the colony.

Victoria passed a law in 1888 limiting Chinese passengers to 1 for every 500 tons as suggested by the inter-colonial conference. The arrival tax was abolished, but a Chinaman entering Victoria by land without the Governor's permission must pay not less than £5, nor

more than £20. This law has not proved as effective as the statute of New South Wales.

New Zealand raised the tonnage to 100 tons per Chinaman, but left the arrival tax at £10 for almost another decade. In 1896, after a struggle with the Senate, or Legislative Council, as it is called, the Seddon Government succeeded in raising the entrance fee to £100. From this it would appear that civilization comes high to a Chinaman. It is the penalty he pays for being born in bad company.

These laws so far discouraged Chinese immigration that the census of 1891 showed but 42,521 Chinese in all the seven colonies, or only about as many as were in Victoria alone in 1860.

We come now to a decided change of method in colonial immigration laws. The laws we have now to study are not specific anti-Chinese acts, but provisions against low-grade immigrants in general. This alteration of method was due partly to the change of the Chinese stream from an invasion to an outgo, together with the fact that other inferior peoples were beginning to come in numbers sufficient to cause uneasiness, and partly to the definite policy established by Joseph Chamberlain as head of the Colonial Office that, for the future, exclusion laws must not be aimed specifically at the people of any nationality but at undesirable persons generally. The Natal law of 1897 followed his suggestion, and has since been copied, more or less completely, by the Australasian colonies. It excludes: (1) Any person who fails to write in some European language an application for admission; (2) A pauper or person likely to become a public charge; (3) An idiot or lunatic; (4) One having a loathsome or contagious disease; (5) One convicted within two years of a serious non-political offense; (6) A prostitute or person living on the earnings of prostitution. The New Zealand law (1899) omits the second and last, and stipulates that the writing test shall not be applied to persons of British birth. Tasmania (1898) omitted the sixth clause. New South Wales (1898) struck out five of the six clauses, leaving only the first. West Australia (1897) enacted all six clauses, improving on the first by *requiring immigrants to write fifty words in English taken from some British author*, a method that allows a better test than the mere writing of a stereotyped application form, using the same set of words each time which might therefore be mastered by very ignorant applicants.

On January first, 1901, the Australian Commonwealth came into being and in the enumeration of powers in the Constitution, the Federal Parliament was given authority to legislate with respect to "the influx of criminals; immigration, emigration," etc.

Early in the first Federal session, the Commonwealth Premier, Mr. Barton, took up the exclusion question and a Federal law was enacted in October, 1901, modeled after the Natalian act and repealing the State acts on the same model.

The main points of the act are: (1) a provision for a writing test of fifty words dictated to and written by the immigrant in some European language directed by the customs officer; and (2) a clause prohibiting the importation of "persons under a contract or agreement to perform manual labor within the Commonwealth," except "workmen exempted by the Minister for special skill," and crews of vessels engaged in the coasting trade, the agreed wages not being below the rates ruling in the Commonwealth.

In addition to contract laborers and persons who fail to stand the European writing test, the class of "prohibited immigrants" includes:

(3) "Anyone likely to become a charge upon the public or upon any public or charitable institution;"

(4) "Any idiot or insane person;"

(5) "Any person suffering from an infectious or contagious disease of a loathsome or dangerous character;"

(6) "Any person who has within three years been convicted of an offense, not being a mere political offense, and has been sentenced therefor, and has not received a pardon;"

(7) "Any prostitute or person living on the prostitution of others;"

Ambassadors or others accredited to the Commonwealth or sent on any special mission by their Government; the King's regular land and naval forces; the crew of any public vessel of any Government; the wife of a man who is not prohibited and the children under eighteen of a person not prohibited; and persons who were formerly domiciled in Australia, are exempt from the prohibitions of the act. The Minister for External Affairs may give to anyone he sees fit a certificate of exemption for a limited period, subject to cancellation by order of the Minister at any time. The crew of any vessel may land while the ship is in a Commonwealth port, going out with the ship when it leaves the harbor.

In his speech upon the bill, Premier Barton said that the selection of the language for the writing test would not be arbitrary and that the test would not be applied at all to persons who were manifestly desirable citizens. This would seem to place a large discretion in the customs officers. The law provides,

however, that any immigrant may be subjected to the writing test at any time within a year, and if he fails under it, he shall be deemed a prohibited immigrant. A person who fails in the writing test may, in the discretion of the officer, be allowed to enter or remain in the Commonwealth on deposit of £100, subject to refunding, if within thirty days he obtains a certificate of exemption from the Minister, or leaves the country. If he does neither, the deposit may be forfeited and he may be treated as a prohibited immigrant.

Violation of the act subjects the prohibited immigrant to risk of six months' imprisonment and deportation. And masters, owners and charterers of any vessel from which a prohibited immigrant enters the Commonwealth are subject to a penalty of £100 for each prohibited immigrant so entering the Commonwealth.

The Barton Government next grappled with the black problem—the Kanakas on the sugar plantations of Queensland. It was claimed that white men could not work in the terrible heat and under the other peculiarly trying conditions of the plantations, and that even if white labor could stand the strain, it would be so much more expensive that this great business, supplying one of Queensland's main products, would be ruined. The people of Australia, however, were determined to wipe out the black spot on their map. They will have a white Australia, cost what it may, so the Federal Parliament passed the Pacific Islands Laborers Act (1901) putting an end to all agreements with Kanaka workers after 1906. After January 1, 1907, the blacks must go. To protect the planters from ruin, a tariff of £6 per ton is put on foreign-grown sugar. The excise duty on sugar grown in Australia is only £3 and £2 of this is handed back to planters who use only white labor.

These two Commonwealth Acts and the New Zealand statutes of 1896 and 1899 above referred to constitute substantially the present immigration laws of Australasia.

This vigorous legislation for the preservation of civilization was not secured without opposition. Some capitalists desire cheap labor, regardless of social and political effects. Some economists also focus their gaze on cheap production and a low wage rate,[2]

[2] It is argued that the Chinese are very industrious and give the Colonists a large amount of valuable service for a small compensation. The statesmen of Australia and New Zealand reply that a man may be industrious and yet be dirty, miserly, ignorant, a shirker of social duty, a source of weakness in the civic life, and a danger to the public health. All these most of the Chinese immigrants are. Moreover, their low plane of living makes even their industry a curse instead of a benefit. The white workman is expected to be clean and comfortably dressed; to marry and have children; be well fed and clothed and educated; to have a home that will be a credit to the neighborhood; to read books, magazines and newspapers; take part in the social life of the community and give a reasonable amount of time and intelligent attention to public affairs. To accomplish this he must have short hours and good wages. But in

oblivious of the fact that manhood in the long run is the most potent factor in wealth production, as well as being itself the highest wealth, the most important product of an industrial system. Some humanitarians think it unjust and cruel to shut the door against a man because he is ignorant and penniless and undeveloped. And some, on religious grounds, regard the incoming of non-Christian masses as a providential facilitation of their propaganda. But the great majority of thoughtful persons regard the matter as a choice of evils, and believe it a lesser evil to limit the locomotion of the unfit than to imperil the civilization of the more progressive countries by an inundation of low-grade life.

A *family* does well to be careful about the sort of people it admits to daily contact and intimate association with its children. And a *nation* may wisely exercise a similar care. A flood of undesirable humanity is a much more serious problem than the importation of a mass of undesirable merchandise. The condition of the lower classes in the old world is pitiable, but even if they go in crowds to a new country, the space they leave soon fills up again with the same sort of social molecules or cells, and the principal effect is the degradation of the new country.[3]

Distance and cost have so far protected Australasia from any large amount of immigration from the lower classes of Italy, Hungary and Russia. But if such an inundation threatened, the disposition to prevent deterioration of the average citizenship and labor level is so strong that, no matter where it comes from, low-grade immigration is likely to be resisted by law.

Countries like New Zealand and some of the Australian States that aim to secure work for the unemployed and pay pensions to the aged poor, have special reason to exercise care in selecting those they take into partnership, and for whose well-being they become responsible. They claim the right to exclude from their association all new comers who do not seem calculated to make reasonably use-

many trades that do not require much intelligence, but only good staying qualities—something alive that can keep moving—a Chinaman without family, or social, or political interests, or even a stomach that calls for good food, can keep at work 16 hours a day and live on 8 or 10 cents' worth of rice in two meals a day, and be as fresh in the 16th hour as he was the first. His competition is unfair. He degrades the standard of living. He comes only to extract what he can from the colony and take it back to China. After scraping up two or three thousand dollars he goes home. At one time the returning Chinese were taking an average of more than a million dollars a year from the Australian Colonies.

[3] The idea of excluding the products of low grade labor abroad by a tariff wall while admitting the low grade labor itself, is one of the absurdities of a politico-economic philosophy that carefully guards merchandise and profit but leaves the wage level open to attack.

ful members of it; the right to keep their soil for men fit to be free and self-governing; the right to prevent the lowering of their standard of life.

The effectiveness of the laws now in force is unquestioned. The Chinese in Australia and New Zealand fell from 42,521 in 1891 to 34,638 at the census of 1901. The strength of the recent Australian statutes and the vigor of the Government's policy are well shown in the speech of Mr. Deakin, Premier of the Commonwealth, at Ballarat, October 29, 1903. Discussing the question of a white Australia, the Premier said:

"In this theatre, two and a half years ago, I laid special stress upon the white Australia policy of the Government. After that there was a fierce conflict in Parliament as to whether the means we proposed to exclude the undesirable and colored aliens would suffice. There were those who wished that on the face of the statute the prohibition against them should appear in so many words. We believed that we studied Australian interests, and also lessened the difficulties of the mother country, if, instead of saying in so many words they should be excluded, we placed in the hands of the Government an educational test which could be applied so as to shut out all undesirables. We have had two years' experience of the working of our test, and it has worked well. You have seen from time to time how few have managed to survive it. The returns for the last nine months show that 31,000 persons entered Australia from over sea, 28,000 being Europeans. Of the remainder, many of the colored persons came to Australia to engage on pearling vessels. The arrangement we have made is that they land only to sign their articles. A guarantee is taken from those who bring them that, when their time is up, they shall leave the country. By this means they never really enter Australia. They merely fish in our waters or just outside them. I find that out of 408 Japanese who came to Australia, 374 went at once to the pearling vessels; 11 others had been in Australia before, and were entitled to return; while one deserted and managed to escape our clutches. Of 406 Malays who came to Australia to engage in the pearling trade, only one was entitled to enter the country, and again we had one deserter. While of the 73 Papuans who came over to assist in pearling, none deserted, and all will return. To come to the persons who, either under the State law or since, have secured domicile in Australia, the return shows that 2,571 colored persons entered the Commonwealth during the nine months, of whom 2,561 entered under the authority of the law. There were only 10 to whom we could not or did not apply the test. Besides these there were 785 Pacific Islanders, who came in under permits, which cease on March 31st next, after which no Kanaka is authorized to be brought into Australia. While 785 came in, 978 went out. There were 755 Chinese entered the Commonwealth, while 1,456 went out. Altogether 3,172 colored people left Australia. The alien colored population is being steadily reduced.

"Now, as to the test. Of course, this is not much applied, because ship-owners

know that if they bring colored aliens to this country who are not legally entitled to land, they will have the pleasure of taking them back to their native land. During the nine months 121 such immigrants presented themselves; 9 only got through. Out of these, two were entitled to do so because they simply came from Ceylon to purchase horses, and of the others I found that five were probably colored sailors who deserted from one ship and enlisted on another. I don't think that during the next nine months even nine are likely to enter. You probably believe that a white Australia is secure. I hope it is, but it won't be secure unless a vigilant watch is kept upon proposals to tamper with it. None of a serious character have been put forward by anybody in a responsible position, but there are indications that we may have to defend the principle yet. So far as this Government is concerned it will be ready for the emergency. A white Australia does not by any means mean only the preservation of the complexion of the people of this country. It means the multiplying of their homes, so that we may be able to occupy, use and defend every part of our continent; it means the maintenance of conditions of life fit for white men and white women; it means equal laws and opportunities for all; it means protection against the underpaid labor of other lands; it means social justice so far as we can establish it, including just trading and the payment of fair wages. A white Australia means a civilization whose foundations are built upon healthy lives, lived in honest toil, under circumstances which imply no degradation. Fiscally a white Australia means protection. We protect ourselves against armed aggression, why not against aggression by commercial means? We protect ourselves against undesirable colored aliens, why not against the products of the undesirable alien labor? A white Australia is not a mere sentiment; it is a reasoned policy which goes down to the roots of national life, and by which the whole of our social, industrial and political organization is governed."[4]

[4] For further information, see the Report of the Royal Commission on Alien Immigration, London, 1903; the Parliamentary debates of the various Colonies and of the Commonwealth, for the years indicated by the dates of the laws mentioned in the text, especially Mr. Barton's Speeches, pp. 3497 and 5492 of the Australian *Hansard*; "A White Australia," by Sir H. Tozer, *Empire Review*, Nov. 1901; the *Australian Review of Reviews* and the columns of Australian newspapers, especially the *Sydney Bulletin* for 1901; "Australia From Another Point of View," *Macmillan's Magazine*, March 1890; "The Chinese in Australia," *Quarterly Review*, July 1888; "Chinese Exclusion in Australia," by H. H. Lusk, *North American Review*, March and April 1902; "Chinese Problem in Australasia," by C. A. Barnecoat, *Imperial and Colonial Magazine*, April 1901; "Exclusion of Aliens and Undesirables," by W. P. Reeves, *National Review*, Dec. 1901; "Australian Immigration," by J. Henniker Heaton, *Leisure Hour*, July 1901; "Australia for the White Man," by Gilbert Parker, *Nineteenth Century*, May 1901; Reeves' "State Experiments in Australia and New Zealand; Dilke's "Problems of Great Britain;" Correspondence Relating to Chinese Immigration into the Australasian Colonies, English Parliamentary Papers, July 1888; and Proceedings of a Conference between the Colonial Secretary (Rt. Hon. Jos. Chamberlain) and the Premiers of the Self-Governing Colonies, English Parliamentary Papers, 1897.

Proposals Affecting Immigration

By John J. D. Trenor, Esq., Chairman of the Committee on Immigration, appointed by the National Board of Trade, for 1904

PROPOSALS AFFECTING IMMIGRATION

By JOHN J. D. TRENOR, ESQ.

NEW YORK CITY

Chairman of the Committee on Immigration, appointed by the National Board of Trade, for 1904

At the outset of the examination of any proposals affecting immigration there should be a full realization of the magnitude of dependent interests and of the injury that will be wrought by ill-considered and misjudged legislation. No subject of national concern demands more assuredly impartial and thorough consideration—in the colorless light of facts determined and determinable—without any bias of prejudice, of misinformation, or selfish, short-sighted interest.

It is needless to enter into any presentation in detail of the contribution of immigration to the upbuilding of this country. It is conceded that the marvellous growth of our nation in every exhibit of industrial progress has been greatly aided by the influx, during the last century, of so many millions of honest, willing and industrious laborers seeking homes and opportunities here for themselves and their children. They have taken part in every memorable achievement and their decisive influence has been cast in the scale to sustain every effort for the maintenance of the life and integrity of the Union.

During the past forty years, there has been a persistent sifting of immigration, with the design of excluding all classes and conditions incapable of assimilation or offensive to our civilization. The Act of 1862 prohibited the importation of "coolie" labor from Oriental countries and subsequent "Chinese Exclusion Acts" have broadly shut out the Chinese as persistently alien and detrimental to the character and homogeneity of our nation. The Act of 1875 excluded convicts, except those guilty of political offenses, and women imported for immoral purposes. By the Act of 1882, lunatics, idiots, and persons unable to care for themselves without becoming public charges, were comprehended in the exclusion.

The Act of 1885, by implication, and the Act of 1887 expressly, added "contract laborers." By the Act of 1891, paupers, persons suffering from loathsome or dangerous contagious diseases, polygamists and "assisted" immigrants were specifically excluded. The Act of 1903 added epileptics, persons who have been insane within five years previous, professional beggars and anarchists. By the same Act also, there was a stringent exclusion of persons deported within a year previous, as being "contract laborers." If by any oversight of inspection any of the excluded persons should succeed in obtaining an entrance to this country, their deportation at any time within two years after their entry is secured when their presence is detected.

The comprehensive Act of March 3, 1903, entitled "An Act to regulate the immigration of aliens into the United States," was professedly the crystallization of thirty years of experience, investigation, debate, and legislation in the solution of the so-called "problems of immigration." The testing of the operation of this Act has barely begun; but, without waiting for any exact determination of substantial defects or insufficiency, further proposals of change are hazarded. Of the two deserving special mention, one would effect a radical change in administration through consular inspection and certification at the ports of embarkation; the other urges a sweeping exclusion, not based on moral character or capacity for labor and self-support, but on literary qualification and comprehension of political institutions—the ability to read and presumably to appreciate a text taken from the Constitution of the United States.

Proposal for Consular Inspection.—The proposal for a change of administrative method, through consular inspection and certification, is a belated revival of a proposition that has received more careful and expert consideration than any other measure affecting immigration that has been urged upon the attention of Congress. Every material point in the case was raised and determined in the investigation of the "Weber Commission" of 1890–1891. The adverse report of this Commission was formally endorsed by Secretaries Gresham and Carlisle and its conclusion has been enforced by the repeated examination and judgment of successive committees on immigration. In the latest hearings before the Senate Committee on Immigration in 1902, the undesirability of regulation by con-

sular inspection was expressly attested by Mr. Charles Warren, representing the Immigration Restriction League, who stated: "I do not think that there is a prominent man who has taken up the subject, who advocates it;" and the Chairman of the Committee confirmed this conclusion by observing: "I understand that the idea of consular inspection has been practically abandoned."

Proposal for "Educational Tests."—The proposition for the introduction of the so-called "educational test" was judicially considered and rejected in the message accompanying the *veto* of President Cleveland on March 2d, 1897. No statement of the case is more obviously impartial or can carry a greater weight of individual authority.

In this statement he observed: "A radical departure from our national policy relating to immigration is here presented. Heretofore we have welcomed all who came to us from other lands, except those whose moral or physical condition or history threatened danger to our national welfare and safety. Relying upon the jealous watchfulness of our people to prevent injury to our political and social fabric, we have encouraged those coming from foreign countries to cast their lot with us and join in the development of our vast domain, securing in return a share in the blessings of American citizenship.

"A century's stupendous growth, largely due to the assimilation and thrift of millions of sturdy and patriotic adopted citizens, attests the success of this generous and free-handed policy, which, while guarding the people's interests, exacts from our immigrants only physical and moral soundness and a willingness and ability to work.

"A contemplation of the grand results of this policy cannot fail to arouse a sentiment in its defense; for, however it might have been regarded as an original proposition and viewed as an experiment, its accomplishments are such that if it is to be uprooted at this late day, its disadvantages should be plainly apparent and the substitute adopted should be just and adequate, free from uncertainties and guarded against difficult or oppressive administration.

"It is not claimed, I believe, that the time has come for the further restriction of immigration on the ground that an excess of population overcrowds our land.

"It is said, however, that the quality of recent immigration is undesirable. The time is quite within recent memory when the same thing was said of immigrants who with their descendants are now numbered among our best citizens.

"It is said that too many immigrants settle in our cities, thus dangerously increasing their idle and vicious population. This is certainly a disadvantage. It cannot be shown, however, that it affects all our cities, nor that it is permanent; nor does it appear that this condition, where it exists, demands as its remedy the reversal of our present immigration policy.

"The best reason that could be given for this radical restriction of immigration is the necessity of protecting our population against degeneration and saving our national peace and quiet from imported turbulence and disorder.

"I cannot believe that we would be protected against these evils by limiting immigration to those who can read and write in any language twenty-five words of our Constitution. In my opinion it is infinitely more safe to admit a hundred thousand immigrants who, though unable to read and write, seek among us only a home and opportunity to work, than to admit one of those unruly agitators and enemies of governmental control, who can not only read and write, but delight in arousing by inflammatory speech the illiterate and peacefully inclined to discontent and tumult. Violence and disorder do not originate with illiterate laborers. They are rather the victims of the educated agitator. The ability to read and write as required in this bill, in and of itself, affords, in my opinion, a misleading test of contented industry and supplies unsatisfactory evidence of desirable citizenship or a proper apprehension of the benefits of our institutions. If any particular element of our illiterate immigration is to be feared for other causes than illiteracy, these causes should be dealt with directly instead of making illiteracy the pretext for exclusion, to the detriment of other illiterate immigrants against whom the real cause of complaint cannot be alleged."

Hon. Samuel J. Barrows, Secretary of the Prison Association of New York, has characterized this test as a suggestion of literary dilettanteism—not measuring the extent of education in its true meaning as the drawing out of faculty, or the capability for

useful and needed service, nor gauging the moral character of any immigrant. In view of this apparent certainty, it may be noted without unfairness that the probable effect of the adoption of this test seems to be of much more concern to the bulk of its advocates than the justice and fitness of its application. It is the simplest and handiest resort for cutting down immigration and it is calculated that it will bear chiefly on the immigration from Southern Europe, which is the most novel and hence least expert in settlement and least supported by widely distributed roots here.

Without discussing further, therefore, the application of this particular device of reduction, it is of prime importance to meet the broader issue—the pressure for the curtailing of immigration. Its advocacy must be based, necessarily, on one of two assumptions —that, in spite of all present safeguards, part of the present influx is unfit to enter this country, or that there is no longer an opening here for the labor seeking admission.

In maintenance of the first proposition, it is alleged broadly that our foreign-born population shows a higher percentage of criminality than the native born; that the immigration from Southern Europe is more burdensome proportionately to our prisons and asylums than the immigration from Northern Europe; and that these immigrants are the makers of the slums of our great cities and are largely thriftless and unprogressive. These are too common impressions through prejudiced and misinformed disparagement, but records of unquestionable authority demonstrate that none of these assertions is correct.

The Immigrant and Crime.—In view of the services of the immigrant in upbuilding this country, there might be some just palliation of a percentage of law breaking in excess of that of the native born. The immigrant has not been reared in conformity with our laws and social restrictions and has been negligently housed in the slums. Yet in spite of our slum traps it does not appear that the record of the immigrant needs any special consideration. Hastings H. Hart, General Secretary of the National Conference of Charities and Correction, has contributed a notable demonstration of the comparative criminality of our foreign and native-born population, in a communication to the *American Journal of Sociology* for November, 1896.

Mr. Hart shows from the United States Census returns (*a*) "that as a matter of fact the foreign-born population furnishes only two-thirds as many criminals as the native-born; (*b*) that while it is true that the native-born children of foreign-born parents furnish more criminals proportionately than those whose parents are native born, yet in more than half the States the showing is in favor of the children of the foreign born; (*c*) that the combined ratio of prisoners of foreign birth and those born of foreign-born parents to the same classes in the community at large is only eighty-four per cent. of the ratio of native-born prisoners to the same class in the community at large."

A common error arises, as he notes, "from comparing the criminal population, foreign and native, with the whole of the general population, foreign and native. The young children of the community furnish practically no prisoners, and nearly all of these children are native born, whether the parents are native born or not. The consequence is that Mr. Hawes has not only given the native population credit for its own children, who are not criminals, but has taken the native-born children of foreign parents, adding them to the native-born population and counting them against their own parents."

"Of the prisoners of the United States 98.5 per cent. are above the age of sixteen years; 95 per cent. are above the age of eighteen years; and 84 per cent. are above the age of twenty-one years. The native-born population of the United States in 1890 numbered 53,390,600; the native-born prisoners 65,977; ratio 1235 in a million. The foreign-born population numbered 9,231,381; the foreign-born prisoners 16,352; ratio 1,744 in a million; an apparent excess of foreigners over native of 41 per cent. But the number of native-born males of voting age was 12,591,852; native-born male prisoners 61,637; ratio 4,895 in a million. The number of foreign-born males of voting age was 4,348,459; foreign-born male prisoners 14,287; ratio 3,285; showing an actual excess of natives over foreigners of 50 per cent."

The accuracy of Mr. Hart's conclusions has since been sustained by a number of independent inquiries of less extended range embracing the ascertainable returns of a number of States whose records are most complete and reliable. The basis of his reckoning of parent-

age is criticized in the statistical report of the United States Industrial Commission on Immigration transmitted to Congress on December 5th, 1901, but his general conclusion is affirmed as follows, viz.: "From this table it will be seen that taking the United States as a whole, the whites of foreign birth are a trifle less criminal than the total number of whites of native birth."

In the report of the Commission there is further noted very significantly the nationality which has contributed far more largely than any other to raise the average of the criminality and pauperism of the foreign born:

"Taking the inmates of all Penal and Charitable Institutions we find that the highest ratio is shown by the Irish, whose proportion is more than double the average for the foreign born, amounting to no less than 16,624 to the million."

There are, unfortunately, too few States that have taken pains to secure and record exact statistics of crime and pauperism for the comparison of nationalities and birth. Among these few is the State of Indiana, and the report of State Statistician Johnson for 1902 significantly shows that a common impression as to the relative criminality of the foreign born is by no means a reliable guide for restrictive legislation. In this report it is noted: "The great majority of Indiana evil-doers who find their way eventually to the State Prison and Reformatory are American born. In the State prison, out of 751 convicts, 531 are white Americans and 122 American negroes, 48 Irish, 27 Germans, 7 English, 4 French, 3 Scotch, 1 Welsh, 1 Russian, 1 Pole, 1 Belgian."

"At the Reformatory at Jeffersonville, with 919 inmates, 696 are white Americans, 191 American negroes, 10 Germans, 2 French, 3 Canadians, 8 English, 1 Scotch, 1 Belgian, 1 Swiss and 2 Irish."

There is a further special contention of the Immigration Restriction League, bearing most severely upon the Italian immigrant, that a "parallelism exists between the criminal tendencies and the illiteracy of the same races." In addressing the Senate Committee on Immigration of the last Congress, Prescott F. Hall, Secretary of this League, cited in support of his contention a tabulated statement from the Twenty-fourth Annual Report of the Massachusetts Prison Commissioners for the year ending September 30th, 1894.

The conclusion which he sought to draw from this report was opposed on the floor of the Senate in December, 1896, by Senators Gibson, Caffery, and others, and the general character of the filtered immigration was attested in particular by an extract from a report of the Commissioner General of Immigration for the year 1895–6 as follows:

"It is gratifying to me to be again able to report to you that I know of no immigrant landed in this country within the last year who is now a burden upon any public or private institution.

"With some exceptions the physical characteristics of the year's immigration were those of a hardy, sound laboring class, accustomed and apparently well able to earn a livelihood wherever capable and industrious labor can secure employment."

There was, however, no direct challenging of the statistical prop of the Immigration Restriction League and its inference until it was picked up and shaken by Samuel J. Barrows, Secretary of the Prison Association of New York, on December 9th, 1902, in a hearing given by the Senate Committee on Immigration. "The Italian people," said Mr. Barrows, "as a whole are a frugal and industrious people. In our statistics we sometimes make discriminations against them that are not correct. We had an illustration of this in Massachusetts. A report was prepared by the Immigration Restriction League which was based upon the criminal record of the Italians in Massachusetts, leaving out all crimes which had been produced through intoxication. That is the way that ingenious plan of statistics was drawn. So they tried to make out a bad case against the Italians.

"Now Massachusetts is the one State in the Union that has made the most thorough examination of the whole question of the relation of intemperance to crime, and the report on that subject in 1895 by the Bureau of Labor Statistics there shows that about 87 per cent. of all the crime in Massachusetts grew out of intemperance in some form. When you take then the Italian population of Boston and of Massachusetts, and ask how many of those people were imprisoned or arrested or committed crime because of intemperance, you find that they rise away above all the Northern races—that is, commit fewer crimes from this cause. The Italian people are a temperate people, and while in Massachusetts three in a hundred of the North-

ern races, including the Scotch, the Irish, the English and the Germans, were arrested for intemperance, only three in a thousand of the Italians were arrested. What a remarkable bearing that has upon desirability and availability."

The evidence of Mr. Barrows is further specifically attested in the report of the United States Industrial Commission on Immigration, covering the tables compiled by the Prison Commissioners of Massachusetts, referred to by Mr. Hall. This report states: "It appears from the table that of prisoners committed to all institutions in proportion to a thousand population of the same nativity those born in Massachusetts numbered 7.5 per thousand, but that, omitting those committed for intoxication, the number is 2.6 per thousand. Below this proportion stand immigrants from Portugal, Austria, Germany, Russia and Finland. The leading nationality above this average is that of the Irish, whose commitments per thousand were 27.1, but omitting intoxication was 6. Next in order of commitments are Welsh, English, Scotch, and Norwegians, all of which show a large predominance of intoxication. The Italians are a marked exception, the commitments numbering 12.9 for all causes, and 10 for causes except intoxication.

The Immigrant and Pauperism.—An allied contention of the Immigration Restriction League is the rolling up of the burden of pauperism through the influx of Southern Latin immigration. As Massachusetts has been picked out by preference on the basis of its exhibit, invidiously distinguishing the Italian immigrant, Massachusetts authority of unimpeachable character is here cited in flat contradiction of this assumption.

In the Twenty-third Annual Report of the Associated Charities of Boston, November, 1902, it is stated:

"The variation in the number of Italians applying for assistance is interesting: 54 families came to us in 1891, and only 69 in the last year, though the Italian population of this city has in the meantime increased from 4,718 to 13,738. This fact seems to corroborate the report of Conference 6 (embracing the North-End District or Italian quarter), which described the Italian immigrant as usually able to get on by himself except in case of sickness, when temporary help is needed."

It is obvious that this report marks not only a low rate of

pauperism but a very material decrease in the percentage of applicants for charity in the face of the much decried influx during the closing years of the last century.

The report of District 6 Conference, referred to in the above summary, remarks: "As the Italian families so largely outnumber the others, and as the Italian element is now predominant in the district, it is worth while to note the chief causes of extreme poverty.

"We observe that intemperance is not found as a chief or as a subsidiary cause in any of this year's list of Italian families. Sickness was the leading chief cause (10) and also the leading subsidiary cause (9); next in order, come the following chief causes: lack of employment due to no fault of employee (4); physical or mental defects (2); roving disposition (3); dishonesty (2); disregard of family ties, lack of training for work, and lack of thrift (1 each).

"If any general inference is fair from so small a number of cases, it is that the Italian families referred to us have not been in the greatest distress. The majority of the Italians are apparently fairly thrifty and those who have trouble are often helped by their countrymen. The little that we have been called upon to do has in some cases set a family at once upon its feet."

The assumption that illiteracy is a prolific source of pauperism is not sustained by the examination of cases known to this Conference, so far, at least, as the Italian immigrant is concerned. "In the matter of illiteracy," the Conference of District 6 states, "we can give positive information about only 45 of the 68 families (applying for aid)—mostly Italians." The record shows 32 Italian families, with 64 parents born in Italy. "Among heads of these families, we find 32 who can read and write; 2 who can read and not write, while 11 can neither read nor write."

As to the burden imposed by recent arrivals the report of Conference 4 is noteworthy: "We found that none of the new arrivals (needing help) were recent immigrants and that almost all of the parents were born in the United States or Great Britain."

Another exact and authoritative record giving an exhibit of pauperism in New York City and its distribution by nationalities is presented in the Thirty-fifth Annual Report of the State Board of Charities of New York, containing the proceedings of the New York State Conference of Charities and Correction at the Second Annual

Session held in New York City, November 19th, 20th, 21st, and 22d, 1901. At this Conference an address on "The Problems of the Almshouse" was given by Hon. W. Keller, President of the Department of Public Charities of the City of New York. In the course of his discussion the following table was presented showing the nativity of persons admitted to the Almshouse in 1900:

	Male.	Female.	Total.
United States	355....	199....	554
Ireland	808....	809....	1,617
England and Wales	111....	87....	198
Scotland	25....	14....	39
France	19....	2....	21
Germany	290....	84....	374
Norway, Sweden and Denmark	22....	6....	28
Italy	15....	4....	19
Other countries	50....	36....	86
Total	1,695....	1,241....	2,936

"Out of a total of 2,936 only 554 were born in the United States; 2,382 were foreign born, and of this number 1,617 were born in Ireland alone."

The determination of the general distribution of pauperism by nationalities has been made in the report of the United States Industrial Commission on Immigration transmitted to the Fifty-seventh Congress. "The proportion of the nationalities among the paupers in our almshouses varies very greatly. The Irish show far and away the largest proportion, no less than 7,550 per million inhabitants, as compared with 3,031 for the average of all the foreign-born. The French come next, while the proportion of paupers among the Germans is somewhat unexpectedly high. The remarkably low degree of pauperism among the Italians is possibly due to the fact that such a large percentage of them are capable of active labor, coming to this country especially for that purpose."

These citations are not made with the design of casting any particular reproach upon the Irish nationality, but simply to correct a prevalent impression discrediting the influx of the Southern Latin races and the alleged relation of illiteracy to pauperism, for it is morally certain that the alleged "educational test" would not

be urged, if it bore severely upon the Irish immigrant, whose value to the country is generally conceded.

The Immigrant and the Slum.—There has been a strenuous harping on the disastrous effect of immigration in filling the slums of our cities and in the prolific breeding of crime and disease. Fortunately for the credit of the immigrants, there has been of late years a dawning perception that it is the tenement, not the tenant, that makes the slum and that the rational remedy for congestion does not lie in the exclusion of the flow of productive labor, but in its effective regulation and distribution. Our present slums are the natural outgrowth of the reckless laxity of our building laws and sanitary regulations. They are plainly chargeable to our civic blindness and the toleration of greed. It is the native-born rookery, not the foreign-born influx, that must bear the burden of reproach for the slum.

This has been conclusively demonstrated in the partial transformation already effected by the pressure of necessity and the sense of responsibility.

In the pithy conclusion of Jacob Riis: "Wherever the Gospel and the sunlight go hand in hand in the battle with the slum, there it is already won—there is an end of it at once." Sometimes the slum has been conquered by cutting out sections bodily, as was done in the annihilation of the infamous Five Points, in the opening of Paradise Park, a playground for the children. "Mulberry Bend," as Mr. Riis observes, "was the worst pigsty of all." "I do not believe that there was a week in all the twenty years I had to do with the den, as a police reporter, in which I was not called to record there a stabbing or shooting affair, some act of violence. It is now five years since the Bend became a park, and the police reporter has not had business there once during that time; not once has a shot been fired or a knife been drawn."

Reconstruction is not a gift enterprise nor a charitable donation. Street widenings and the opening of squares and little parks are the changing of antiquated, inconvenient and unhealthful conditions for the essential requirements of a modern city. Reconstruction of dwellings to meet proper requirements is not any half-way approach to the erection of almshouses. It has been repeatedly demonstrated that the so-called model tenements will unfailingly pay

even higher average returns than the business buildings erected under modern regulations in the best city locations. Even where there is an apparent strain of philanthropy or extraordinary accommodation for the rental charges, as in the erection of the Riverside Tenements in Brooklyn, the return is certified to be never less than six and even seven per cent. on the investment.

Relief of Congestion.—The relief of congestion by more effective distribution is undoubtedly desirable. The importance of this provision of relief has been emphasized repeatedly by our Commissioners of Immigration, and it is particulary urged by the present Commissioner General as the only adequate solution of the so-called "problem of immigration." This national concern may rationally and appropriately be a national undertaking, as leading sociologists and practical handlers of immigration have insistently advised.

Wider distribution, so far as it has been effected by local and spasmodic effort and the drift of unassisted settlement, has done away with any complaints of the influx. Recent and searching inquiries among the smaller cities and towns of the country as to the condition and occupation of the immigrants show that they are now fully employed, as a rule, and that their sterling qualities are clearly appreciated.

With scarcely an exception, when they have been drawn into the agricultural districts their settlements have been thriving. Their knowledge of intensive farming enables them to develop exhausted soils and even abandoned farms successfully. The chief obstacle in the way of this drift has been the prejudice against agriculture derived from bitter experience with land monopoly and disproportionate taxation in their native countries, but this prejudice is disappearing with the better information now spreading among them.

There has never been a period in which the Southern States have been so energetic in courting immigration. They see in it the surest and quickest solution of their labor and racial problems. The recent organization of the "Four States League" and the formation, only a few weeks ago, of the "Immigration Association of South Carolina," are significant indications of a rising demand for immigration, notwithstanding the extraordinary flow of recent years

to this country. There has been a very considerable attraction of Italians already to the sugar cane plantations, and the influx to the Southern States should grow with the extending familiarity of the immigrants and the rising appreciation of their peculiar adaptation for varied plantation service. Even if the South continues to draw largely from the North and West, as at present, instead of enlisting the newcomers directly, the drain of older settlers must be filled by immigration or the North will suffer.

There is further an expanding demand for the heavy outdoor labor of the recent immigrant in the extension of public works of all kinds, railway building, etc. These elemental undertakings in industrial development are necessarily dependent on the certainty of the supply of willing and sturdy labor, and their progress will inevitably be checked by any shrinkage of this supply. It is apparent that the effect of this employment and the consequent development of the country should be to expand the demand for workers in every line of industry. Hence the entry of immigrants does not operate to exclude American laborers now here from profitable occupation, but surely in the long run to increase the demand for their labor.

II. The Government Regulation of Banks and Trust Companies

(*Continued*)

The Relation of Trust Companies to Industrial Combinations, as Illustrated by the United States Shipbuilding Company

By L. Walter Sammis, Esq., Editorial Staff New York "Sun"

THE RELATION OF TRUST COMPANIES TO INDUSTRIAL COMBINATIONS, AS ILLUSTRATED BY THE UNITED STATES SHIPBUILDING COMPANY

By L. WALTER SAMMIS, ESQ.
Editorial Staff New York *Sun*.[1]

The industrial combinations of to-day are not the simple result of business conditions; neither are they, as they actually exist, the simon-pure offspring of economic principles. Trusts are made, not born. They are in part creatures of invention which find their origin in the brain of the promoter whose inventive faculties are stimulated by the desire for unearned wealth. "Necessity is the mother of invention," even as applied to the invention of a trust, but the necessity in this case is not a necessity created by economic laws, but the necessity of the promoter.

Trust companies and similar institutions sometimes bear the same relation to industrial combinations as manufacturers do to the product of the mechanical or scientific inventor's brain. They produce it, place it on the market, and find purchasers for it, compensating themselves, by getting the largest obtainable profit for the least possible risk or responsibility.

Through the protracted legal proceedings against the United States Shipbuilding Company, the public has had an opportunity to observe the methods by which an industrial combination was actually financed.

My purpose is to produce a photograph of how it was done, not a thesis on how it should be done.

[1] I deal with this topic in my personal capacity, and not in any sense as representing any other body or bodies of men, and without reflecting the views of any one else.

It is my good fortune to be a member of the editorial staff of the New York *Sun*, but it must be distinctly understood that neither the substance nor the language of this article has been submitted to any of my associates, nor is the New York *Sun* in anywise responsible for my statements.

It is important that my position shall be clearly understood as to combinations of capital, commonly called trusts, and also as to "trust companies," both actual and nominal.

Whatever may be said in this article with reference to the *morale* of the Shipbuilding Trust must not be understood as defining, or even reflecting my attitude towards all combinations. I do not take the position that the combination movement in itself is bad, nor that all combinations are evil-producing in their results; and it is too palpable to require affirmation, not only that trust companies were originally fiduciary institutions, but also that many of them remain so, in the true sense of the word, to-day.

The United States Shipbuilding Company was incorporated under the laws of the State of New Jersey, by dummies furnished for the occasion, on June 17, 1902, with a subscribed capital of $3,000. On July 3d following, the capitalization was, on paper, increased to $45,000,000 in stock and $26,000,000 of bonds. On the 11th and 12th of August the United States Shipbuilding Company purchased the Union Iron Works, the Bath Iron Works, Limited, The Hyde Windlass Company, The Crescent Shipyard Company, The Samuel L. Moore & Sons Company, The Eastern Shipbuilding Company, The Harlan & Hollingsworth Company, The Canda Manufacturing Company and the capital stock of the Bethlehem Steel Company, paying for them $6,000,000 in cash, $14,050,000 of bonds and $28,000,000 of stock. The entire amount of securities disposed of to acquire these companies and to provide $1,500,000 working capital and to pay the profits of the various persons and institutions concerned in the promotion amounted, at par value, to $69,500,000. For this $69,000,000 of securities the combination received, besides the required cash working capital of $1,500,000, constituent companies which, omitting the Bethlehem Steel Company, were valued later by competent men at $12,441,518.26. The Mercantile Trust Company was the Trustee under the first mortgage on the Shipbuilding plants, securing $16,000,000 of bonds and the New York Security and Trust Company was the Trustee under the mortgage on the capital stock of the Bethlehem Steel Company, which was also a second mortgage on the Shipbuilding plants, securing $10,000,000 of collateral mortgage bonds.

The Trust Company of the Republic was banker for the issue of the bonds, and, through its President, advanced large sums of money, much of which was obtained by borrowing on Shipbuilding securities. When the crash came the Trust Company of the Republic was able to figure up a cash loss of $982,334.

With the fall of the United States Shipbuilding Company my story has nothing to do. My theme is the methods by which it was established, false and insecure as that establishment was, and my story must end at the point where it was left to stand alone, for at that point it reached its meridian.

To a full understanding of the matter it is necessary to take up the tale at the beginning.

John W. Young was a promoter who had the idea that it would be a good stroke of business to combine the leading shipbuilding industries of the country into one gigantic corporation, and had worked out a theory by which it could be done with much profit to the promoters.

Young's idea was good, but his method, which he made inseparable from his idea, was bad. After many futile attempts, he succeeded in finding a group of men who accepted his theory, and using it as a base, constructed thereon a condition which they called a trust, and which was incorporated under the name of the United States Shipbuilding Company. The theory was impossible; the condition was untenable; the trust, as it was manufactured, was impracticable, and the United States Shipbuilding Company was insolvent.

The financial world was absorbed at the time in creating industrial combinations, some of which were either actually bankrupt or were on the verge of bankruptcy, inflating values and watering stocks, successfully offering new securities to a public eager to buy them and finally dividing with promoters and vendors profits which, even in that era of inflation, were considered enormous. Young got his first start when he met Lewis Nixon.

Mr. Lewis Nixon had been a constructor in the United States Navy but had resigned from the service to engage with the Cramps. As a naval constructor he designed the *Oregon*, the *Indiana* and the *Massachusetts*, and these vessels established his reputation as one of the ablest shipbuilders in the world. Five years, at least, before he met Young he had leased the Crescent Shipyards at Elizabethport, N. J., and later acquired various properties until he had bought all the available waterfront adjacent to the original shipyards property. Subsequently he organized the Crescent Shipyards Company, and this was capitalized for $1,200,000. Young interested Nixon by showing him an option for the purchase of the Newport News Shipbuilding and Dry Dock Company, and Nixon gave Young an option on his own plant and agreed to work with him in forming the proposed combination. This was the start. Young now had two options and the name and reputation of the greatest shipbuilder of the United States to work with.

He had the co-operation of Col. John J. McCook, a director in

the Mercantile Trust Company and as well an active partner of the law firm of Alexander & Green, counsel for the Mercantile Trust Company, counsel for the United States Shipbuilding Company, and from time to time counsel for Nixon and Dresser as the Shipbuilding Syndicate. Col. McCook, as he has told me, became intensely interested in the proposed combination and did all he could to accomplish it. Young occupied a room adjacent to the offices of Alexander & Green, and Alexander & Green, Col. McCook and Young worked in unison. Options on other shipbuilding companies were obtained and the plan was submitted to the banking house of H. W. Poor & Co., on Wall Street, which finally consented to become banker for an issue of bonds and a prospectus was prepared. The companies which were then to be included were substantially the same as those which finally entered it. The prospectus was ready for issue on May 7, 1901, but on that day occurred what is known as the Northern Pacific panic, and the pamphlets were not distributed. Some say this was because of the panic; others that it was because no satisfactory report could be obtained of the annual earnings of the constituent companies. Whatever the reason, the project fell flat and Poor & Co. did not attempt to revive it. The promoters had all their work to do over again. For nearly a year they tried unsuccessfully to get other financial houses to assume the undertaking. Meanwhile, they succeeded in renewing some of their options.

On the 31st of March, 1902, the Trust Company of the Republic opened its doors for business at 346 Broadway. Its capital was $1,000,000, and its surplus $500,000. The Trust Company of the Republic proposed to deal with cotton growers in the South, who are accustomed to borrowing money at the New York legal rate of interest plus a bonus. It intended to lend money to the cotton people against crops stored in warehouses, at the legal rate of interest and without bonus, and to borrow money in the North against these crops and on other securities which it should accumulate. The opportunities for a large and lucrative business were bright and alluring. The new Trust Company had among its organizers and directors men whose names stood then and stand to-day for strength and probity in the world of finance.

As the head of this concern whose future promised so much,

the directors selected Daniel LeRoy Dresser. Mr. Dresser was a merchant, not a financier.

However, here was a new Trust Company, anxious for business, with a man inexperienced in financial affairs at its head. In the same city were an eager promoter and a firm of lawyers, who had for a long time used every effort to obtain the support of a financial institution in their joint project without success. Such a combination has its possibilities. These were sufficiently attractive for Mr. Young, the promoter, to seek an alliance with Mr. Dresser. He succeeded, but not until it had been made apparent to Mr. Dresser that Col. John J. McCook was associated with Young, in the plan which he had to propose. The subject of the United States Shipbuilding Company was not at first broached to Mr. Dresser by the promoters. He was told of a syndicate of French bankers who desired to trade in American industrial securities and do their trading on this side of the Atlantic so that they might avoid the tax to which such transactions are subject when accomplished within the jurisdiction of the laws of France. It was represented to Mr. Dresser that the syndicate had been formed and was waiting only to make a connection with a responsible and reputable house in the United States. Profits derived from business which they should transact together were to be divided equally.

This seemed to Mr. Dresser to be an excellent opportunity for the Trust Company of the Republic, especially since the capital of the French Institution was represented to be 20,000,000 francs, and before the Trust Company of the Republic was a month old the preliminary arrangements for a working agreement had been completed and put in writing. Before binding agreements were attempted, however, the matter of the French banking house, of the existence of which no conclusive proof has been adduced, was dropped, and the plan for forming a shipbuilding combination was substituted. Exactly how this was accomplished it is almost impossible to determine. The truth is difficult to ascertain when the statements of the individuals most interested vary so widely. As a matter of fact, though, while negotiations concerning the French banking house were still uncompleted Young sailed for Paris, leaving his affairs in the hands of his laywers. This was on April 22, 1902.

Mr. Young was absent on this trip to Paris about three weeks, returning to America about May 15th. During his brief stay in this country, before he took his second trip to Paris, copies of a prospectus dated April 19, 1902, and marked "Private and Confidential," for the consolidation of the shipbuilding plants under the name of the United States Shipbuilding Company appeared, with the name of the Mercantile Trust Company as trustee of the mortgage and Alexander & Green as counsel.

Mr. Dresser was asked to take up the matter of exploiting the United States Shipbuilding Company. A memorandum was shown to him, setting forth the profits which were to be derived from the successful performance of this work. Mr. Dresser agreed that the Trust Company of the Republic should act as banker, its name was inserted and the prospectus was "confidentially" issued.

The original proposition was to issue $16,000,000 of bonds and $20,000,000 of stock, divided equally into common and preferred shares. This was before the Bethlehem Steel Company was considered.

A digest of the memorandum shows that it was proposed to dispose of $9,000,000 of bonds, $2,500,000 of preferred stock and $2,500,000 of common stock in order to realize $8,100,000 in cash. Of the cash and securities then remaining and in hand $6,400,000 in cash, $4,050,000 of bonds, $4,000,000 of preferred stock and $4,050,000 of common stock were to be paid to the owners of the properties to be acquired, leaving $1,700,000 cash, $2,950,000 in bonds, $3,750,000 of preferred stock and $2,750,000 in common stock. Of this, $1,500,000 in cash and $1,500,000 of bonds were to be retained in the treasury of the proposed combination for working capital. This left $200,000 cash, $500,000 bonds, $3,750,000 preferred stock and $3,750,000 common stock—a grand total of $9,150,000, figuring the securities at par value—to go to the promoters. From it they were to defray the expenses of promotion. Before the constituent properties were purchased, however, $400,000 cash was added to this profit by reducing the aggregate price to be paid for constituent companies to $6,000,000. The underwriting contract was with, and ran to the Mercantile Trust Company.

The Trust Company of the Republic was asked to obtain $3,000,000 of the $9,000,000 of underwriting and was assured that

the remaining $6,000,000 was obtained or would be obtained, in Paris and London. In a letter written to the Trust Company of the Republic later John W. Young promised that its compensation should be $67,000 in cash, $250,000 in bonds, $700,000 in preference shares and $700,000 in common shares. This was large bait, and it was swallowed. The hook made its presence felt later.

From this time on Mr. Dresser, acting for himself and for his company, worked with Lewis Nixon in promoting the combination. When Young sailed for Paris he left his options, which were made to Lewis Nixon as trustee, with Alexander & Green and gave Mr. Nixon power of attorney over them. Young left also a tender of all the companies which were to be included in the combination. The Trust Company of the Republic desired some further information than was contained in the prospectus, and one W. T. Simpson, the accountant upon whose figures the prospectus was based, was sent to Mr. Dresser. The accountant succeeded in showing Mr. Dresser and his advisers that the companies to be taken in were in good condition and that to combine them was desirable. The Trust Company of the Republic then took up the favorable consideration of the tender of the companies which were to form the trust.

By the terms of the underwriting agreement the $9,000,000 of bonds were to be underwritten at 90 and each underwriter was to receive as a bonus 25 per cent. of his underwriting in each kind of stock. A public offering was to be made of the underwritten bonds at 97½, and the difference between this and the underwriting price was to be shared *pro rata* among the underwriters, less expenses of advertising, etc.

Just at this time the agitation for a subsidy on American-built ships had reached its height and the measure before Congress seemed certain to succeed. English companies were casting something more than longing eyes in the direction of our shipyards in consequence, and were making substantial efforts to form such a combination as Young proposed. On the surface, with two-thirds of the bonds to be underwritten abroad, the plan seemed certain of success—and the profits to accrue to the principals in the undertaking were most enticing. The Trust Company of the Republic agreed to undertake that portion of the labor assigned to it and obtain $3,000,000 of underwriting. It did this more willingly

since word had been received from Young in Paris, that he was succeeding and that the underwriting allotted to the French capital would be completed in a few days.

The investing and speculating public had, seemingly, recovered tone and was at least supposed to be ready again to absorb securities of industrial combinations. It was not apparent at that time that the market was in the condition so excellently described by the most successful reorganizer the country, perhaps the world, has ever seen—glutted with undigested securities. Promoters and underwriters alike prophesied an easy sale for the bonds and a correspondingly easy reaping of profits.

The Trust Company of the Republic performed its share of the labor without great difficulty, for the prospect of a large bonus of stock without the investment of a dollar appeals to underwriters. Indeed, so good did the proposition seem that $320,000 of bonds were paid for by the underwriters and withdrawn from the public offering, and $2,500,000 was represented to have been sold abroad.

When Young went to Paris, ostensibly to attend to the matter of the French bank, but really to obtain underwriting for the Shipbuilding Company, he found no difficulty in accomplishing his purpose so far as obtaining names was concerned. He had been in Paris before on promotion enterprises and had among his acquaintances a certain Baron P. Calvet-Rogniat. Him he enlisted in the undertaking, and when he returned to New York in the middle of May he brought a written contract in which the Baron agreed to obtain $3,000,000 of underwriting in France.

Rogniat's undertaking was as follows:

"PARIS, May 7, 1902.

JOHN W. YOUNG, Esq.,

DEAR SIR:

In consideration of the premises I for myself and as the representative of a group of financiers headed by Mr. Victor Schreyer, hereby undertake and agree to obtain the signatures of said group of *substantial underwriters* (*who are good, and who have agreed to underwrite the same*) to the underwriting letter of the UNITED STATES SHIPBUILDING COMPANY, a copy of which is hereto attached, dated April 19, 1902, to the full amount of three millions five hundred thousand dollars of the bonds of said company on or before May 21st properly verified, the same to be cabled to Messrs. Alexander & Green, 120 Broadway, New York City, on or before that date.

I also undertake and agree to procure either the withdrawal of said bonds under the terms of said underwriting letter; or the public issue of said bonds under the terms of said letter through either the Franco-Swiss Bank of Paris or other equally substantial bank, simultaneously with the public issue of the said company's bonds in America, it being understood in accordance with clause one of the said underwriting letter that this agreement shall not be binding upon the undersigned unless the entire amount of $9,000,000 of bonds shall have been underwritten.

Yours truly,
P. CALVET ROGNIAT."

Rogniat and those who were associated with him in Paris obtained names to this underwriting agreement and nominal subscriptions for this amount and more. It was easy to do so because a list of names signed to the underwriting agreement seemed sufficient. The element of responsibility was not closely inquired into nor thought essential.

Representations were made to prospective underwriters there that the American public was eager to buy the securities of industrial combinations, and that all that was required was a list of names with amounts set opposite to each which should aggregate $3,000,000; that the securities would find a ready market here, and that the issue of $9,000,000 would be oversubscribed. This, it was explained, would leave the underwriters in the enviable position of taking profits without investing a single franc. This is usually, of course, the ideal of an underwriter, but it is customary, even in Wall Street, for an underwriter to be able to meet his obligation.

So far as can be ascertained few substantial Parisians placed their names on the agreement. Strenuous efforts which were made later to compel these underwriters to pay their obligations failed absolutely, except that the Baron Rogniat did contribute $25,000, for the recovery of which amount he has brought suit against the Mercantile Trust Company. A total of $4,250,000 was underwritten in this manner in the French capital and a list of the names obtained was forwarded.[2]

Mr. Dresser, who obtained the underwriting allotted to him, was advised by Col. McCook that because of the coronation preparations which were being made in London it had been found impos-

[2]For an article on the "History of the French Baron-Underwriter," see the New York *Evening Post* of January 6, 1904.

sible to conclude arrangements for obtaining the $3,000,000 of underwriting which had been assured from the English capital. Mr. Dresser was asked if he would undertake to obtain here an additional $1,750,000. The list sent by Rogniat indicated that Paris would take $4,250,000, which left only $1,750,000 of the foreign underwriting to be secured. Mr. Dresser agreed to perform this extra work. The burden was being shifted gradually to the shoulders of the Trust Company of the Republic. The proposition contained in the cable (*q. v.*) of Mr. Alexander from France, to Alexander & Green, New York, to assign the underwriting to the Trust Company of the Republic was significant.

The bonds of the United States Shipbuilding Company were offered to the public on June 14, 1902. On that date a prospectus was published in the public prints which stated what was not true. The question whether the responsibility for this prospectus rests with the Trust Company of the Republic or with the Mercantile Trust Company or with both is before the courts.

The prospectus stated, among other things, that the United States Shipbuilding Company had been organized under the laws of the State of New Jersey, and mentioned as directors a number of responsible men. It goes without saying that these gentlemen were not directors, because the company had not yet been incorporated. Some of them say they were not consulted about the use of their names, and only four of them ever served as directors when the company was organized some months later. The prospectus went on to say that Alexander & Green, counsel for the new company, certified as to the validity of the organization and of the securities issued and the title of the company to the property acquired. It stated that the plants were earning $2,250,000 a year and had abundant facilities for additional work and increased earnings. On June 18th the books were opened for subscriptions in twelve cities in this country, and in Paris, and the fishermen sat back and waited for the public to take the bait.

The response was not only discouraging; it should have been fatal. The public sent subscriptions for only $490,000 of the bonds. This was again a period where the Trust Company of the Republic should have thrown the undertaking overboard and charged the expense it had incurred to profit and loss, but they seemed to have

relied upon the French underwriting. The public did not rise to it, the underwriters generally did not want it sufficiently to take their bonds before they were offered at public sale, and the whole thing was flattening out.

The promoters turned to Bethlehem (not in the scriptural sense) for salvation.

On June 12, 13 and 14, 1902, Mr. Dresser and Mr. Nixon discussed with Charles M. Schwab, then President of the United States Steel Corporation, the advisability of acquiring the Bethlehem Steel Company for the Shipbuilding Company, and submitted to him financial statements of the shipbuilding plants, their resources, liabilities and earnings. The Bethlehem Steel Company was prosperous and remunerative and, besides, would place the United States Shipbuilding Company, if acquired by the combination, in the enviable position of being able to build armored vessels and thus compete for government work.

Some idea of the value and importance of this company can be learned from the earning capacity of the property. At the time of its transfer to the Shipbuilding Company, it was earning at the rate of $1,500,000 a year, and is now earning, I am informed, at the rate of $3,000,000 a year. The interest charges on the underlying bonds make the only fixed charges of $557,500, which would leave substantially, at the present rate of earning, for distribution upon the securities issued on account of that property 5 per cent. on the $10,000,000 of bonds, 6 per cent. on the $10,000,000 of preferred stock and 14 per cent. on the $10,000,000 of common stock.

Mr. Schwab asked for the Bethlehem Steel Company $9,000,000 in cash, besides a certain amount of securities. The cash was, of course, out of the question. The promoters had peddled all the securities for which they could find a market and did not see their way clear to sell outright bonds against the Bethlehem Steel Company, which was the only way in which they could raise money to pay the demand of Mr. Schwab. They proposed therefore to pay for the Bethlehem Steel Company with securities issued against that plant itself. Mr. Schwab told them that Mr. J. P. Morgan, who was then in Europe, would have to be consulted, because J. P. Morgan & Co., as managers of another syndicate, held the stock of the Bethlehem Company and were entitled to participation

in any profit realized from such a sale. Mr. Morgan was communicated with by cable and an answer was received. In the afternoon of June 14, 1902, Mr. Nixon and Mr. Dresser closed the negotiations for taking the Bethlehem Steel Company.

Nixon and Dresser agreed that Mr. Schwab should receive $10,000,000 collateral mortgage bonds and $10,000,000 of each kind of stock, $30,000,000 in all at par, for the capital stock of the Bethlehem Steel Company. Later the common stock was increased by an additional $5,000,000. By this method it was proposed to increase the capitalization of the Company, advertised as $20,000,000 with $16,000,000 bonded indebtedness, to $45,000,000 stock and $26,000,000 bonded indebtedness.

After the negotiations for the Bethlehem property were concluded, Mr. Schwab called in his counsel, Mr. Max Pam, to prepare the necessary contracts. This was Mr. Pam's first connection with the matter.

On June 17th, three days after the prospectus was published, the United States Shipbuilding Company was incorporated in New Jersey by an officer and two employees of the Corporation Trust Company with a capital of $3,000. These men acted as directors also, taking their instructions from the promoters. In July the capital of the company was increased to the amount I have already mentioned, a dummy board of directors having been furnished for this purpose.

On July 2d Mr. Nixon and Mr. Dresser went to Mr. Schwab's office to sign the formal agreement under which they were to take over the Bethlehem Steel Company. They contracted to pay to J. P. Morgan & Co., as syndicate managers, $7,246,871.48 in cash and $2,500,000 of each kind of stock of the Shipbuilding Company for the 299,910 shares of the Bethlehem Company which were held by J. P. Morgan & Co. as syndicate managers. This was the entire issue of Bethlehem stock, with the exception of ninety shares. The par value of each share was $50. In order to get the money with which to pay J. P. Morgan & Co., Mr. Nixon and Mr. Dresser signed with Mr. Schwab an agreement which assured to them this cash requirement.

Under this agreement Mr. Schwab contracted to furnish the cash necessary to acquire the stock of the Bethlehem Steel Company

and to accept in return $10,000,000, par value, 5 per cent., twenty year collateral gold bonds, and $7,500,000 of each kind of stock of the United States Shipbuilding Company. The mortgage on which the bonds were to be issued was to be a second mortgage lien upon the properties of the Shipbuilding Company and to have a voting power equal to the same amount of stock, although the first mortgage on the constituent companies was not to cover the Bethlehem Steel Company. The shares of the Bethlehem Steel Company, acquired thus with Mr. Schwab's money, were to be deposited with the New York Security and Trust Company as security for the mortgage; the Shipbuilding Company was required to guarantee a dividend of 6 per cent. on the capital stock of the Bethlehem Company; to provide the Bethlehem Company with work sufficient to earn this dividend, or to advance the money therefor, and to see that the Bethlehem Company should always have the $4,000,000 working capital which it then claimed to have.

It was also agreed that the holders of the collateral bonds in the absence of any default should elect a full minority of directors of the Bethlehem Steel Company. The form and provisions of the bonds to be issued under this agreement were to be satisfactory to Mr. Schwab and his counsel, and the deal was not to be concluded until the other constituent companies had been duly acquired and paid for.

Mr. Schwab and Mr. Pam have been criticised severely for making the terms of this contract stringent. I asked Mr. Pam recently why Messrs. Nixon and Dresser agreed to the terms of that contract, and he replied that the terms of the contract were not unreasonable; that they were intended to protect Mr. Schwab against any untoward contingencies; that the agreement was submitted by Messrs. Nixon and Dresser to their counsel and was fully discussed and passed on by their counsel before being signed by them; that the terms of the agreement were assented to and the contract signed after conference and negotiation between himself and Messrs. Nixon and Dresser and Messrs. Alexander and Green, who, in this matter, were acting as Nixon and Dresser's counsel.

Mr. Alexander, while abroad, had gone to Paris to see if any money could be collected from the underwriters there, but he

apparently found them averse to paying anything. In the first place, they are reported as saying they had been induced to underwrite by being told that payment would never be expected; in the second place, after the pitiful failure of the public offering, a cable was sent to Paris saying that the public issue was a success. This the Paris underwriters interpreted as meaning that the entire $9,000,000 of bonds had been taken by the public and that nothing remained for them to do except to take their profit. They refused to accept Mr. Alexander's explanation that it was the custom in this country to call an issue a success, no matter how badly it had failed, and to peddle the bonds afterwards. The best Mr. Alexander was able to accomplish was to get the Frenchmen to give their notes for the amounts they had underwritten. These notes were to mature on October 6th. That the French underwriting was *nil* was not, however, admitted by the contracting parties. It was still carried as a good asset and counted as part of the underwriting.

Assurances were received from Paris, from time to time, reiterated, that the money from the French underwriters would be forthcoming.

On the 23d day of July, 1902, by cable, the French underwriting was called.

The calls were made by cable, possibly to avoid legal complications under French laws. The following cable is an example of the call:

"July 23, 1902.

ODERO,

C/o Panta [the cable address for Rogniat] Paris.

Have allotted you $8,000 bonds of the Shipbuilding underwriting. Pay Morgan & Harjes twenty-five per cent. on allotment July twenty-fifth. Upon payment we will issue negotiable receipt in New York to your order.

MERCANTILE TRUST CO."

A call was made in America at the same time.

The American underwriters had responded promptly to the call, and an inquiry from New York as to why Paris did not pay brought the following:

"PARIS, July 25th, 1902.

MACCOOK, N. Y.

All I hear indicates general response. Short notice creates slight delay.

Appreciate money must be in New York before August. Underwriters contemplate simultaneous payment. Have payments been made New York.

(Signed) BEATTY."

(Maccook was the New York cable address of Alexander & Green, and Beatty was the Paris cable address of C. B. Alexander.)

On the 5th of August, 1902, matters were approaching a crisis and the following was sent:

"NEW YORK, August 5, 1902.

OPPENHEIM, YOUNG AND MAYER,

C/o Trebor, Paris.

Can you not give us an exact statement of the present condition of payments by underwriters each for twenty-five per cent. due July twenty-fifth and August first respectively, and when cash remittances will be actually paid? We must know on account of commitments here, and so far have nothing except promises. Where is the hitch and why the continued delay after everything so far as we can gather from your cables is settled.

REPUBLICUS MACCOOK NIXON."

Finally on the 7th, the following cable was sent to Young:

"NEW YORK, August 7, 1902.

YOUNG,

C/o Trebor, Paris.

We are getting tired of promises to pay to-morrow. We must make our payments here and must have French money to do it with.

REPUBLICUS."

The following cables further explain the situation:

"NEW YORK, August 8, 1902.

CALVET ROGNIAT,

C/o Trebor, Paris.

Monday last day for closing Bethlehem. All other plants must be paid for before closing this transaction. It is absolutely essential to have your money in New York Saturday.

REPUBLICUS."

"NEW YORK, August 11, 1902.

CALVET ROGNIAT,

C/o Trebor, Paris.

No payments received to-day from French underwriters. Please cable immediately when money is to be in New York.

REPUBLICUS."

"PARIS, August 12, 1902.

REPUBLICUS, N. Y.

Rogniats Russian returns delayed yesterday; learn part arrived, he and others pay to-day; Schreyer and all seem now ready to pay. Know nothing of second call. Have wired Alexander to come here.

Our persuasion and his iron hand in velvet gloves of course will bring desired results.

YOUNG."

And finally we have this significant suggestion by cable:

"ST. MORITZ, AUGUST 13, 1902.

"MACCOOK." Alexander & Green, N. Y.

Suggest Mercantile assign to Shipbuilding Company call, who can sue or to Republicus with consent of Shipbuilding Co.

ALEXANDER."

As late as September 8th the theory was still current that there would be results from the French underwriting.

About the 6th of October, 1902, Mr. Dresser arrived at Paris and within a few days after his arrival cabled to the Trust Company of the Republic that the French underwriting was valueless.[3]

The Mercantile Trust Company was a party to the underwriting agreements, in manner as appears from the printed form of such agreements, and which is the same as the signed originals except that it contains the words "Private and Confidential" and the date "April 19, 1902," at the top. The printed form is as follows:

PRIVATE AND CONFIDENTIAL APRIL 19, 1902.

THE UNITED STATES SHIPBUILDING COMPANY.

A corporation to be organized under the laws of the State of New Jersey, either by that or some similar name, proposes to acquire the plants and equipment of the following concerns or their capital stocks, free from any liens:

THE UNION IRON WORKS, San Francisco, California.
THE BATH IRON WORKS, Limited,
AND Bath, Maine.
THE HYDE WINDLASS COMPANY,

[3]For detailed history of the cables and correspondence, see New York *Evening Post*, October 8, 1903.
What is reported to be Rogniat's version of the Shipyard transaction appears in the New York *World* of January 11, 1904.

THE CRESCENT SHIP YARD	
AND	Elizabethport, New Jersey.
THE SAMUEL L. MOORE & SONS COMPANY,	
THE EASTERN SHIPBUILDING COMPANY,	New London, Connecticut.
THE HARLAN AND HOLLINGSWORTH COMPANY,	Wilmington, Delaware.
AND	
THE CANDA MANUFACTURING COMPANY,	Carteret, N. J.

UNDERWRITING AGREEMENT.

For $9,000,000 Series A First Mortgage, Five Per Cent. Sinking Fund, Gold Bonds, due 1932, part of an authorized issue of $16,000,000, Bonds of $1,000 each, $5,500,000 being Withdrawn from Public Issue for Disposal under the Vendors' and Subscribers' Contracts, and $1,500,000 being Reserved in the Treasury of the Company. Additional Bonds may be issued only for the Purpose of Acquiring Additional Plants and Equipment and for Improvements and Betterments, upon such Terms and Conditions as shall be Approved by the Holders of a Majority of the Bonds under the Present Issue Outstanding at the Time of such Approval.

We, the undersigned, agree, each for himself, with The Mercantile Trust Company, for itself and for the United States Shipbuilding Company, and to and with each other, to subscribe to, receive and pay for the amount of five per cent. first mortgage, sinking fund, gold bonds of the United States Shipbuilding Company of one thousand dollars each, set opposite our respective signatures hereto, at the price of $900 for each bond, 25 per cent. to be paid upon allotment and the balance upon the demand of The Mercantile Trust Company.

We further agree to receive and pay for any smaller amount than that subscribed for which may be allotted to us respectively.

The conditions of this underwriting agreement are as follows:

1 That this agreement shall not be binding upon the undersigned unless the entire amount of $9,000,000 of bonds shall have been underwritten.

2 That within such reasonable time as shall be fixed by The Mercantile Trust Company the said $9,000,000 of bonds (less any amount withdrawn by the underwriters as hereinafter set forth), will be offered to the public, through such banker or bankers or brokers as shall be designated by The Mercantile Trust Company, for subscription at not less than 95%.

3 With the consent of the Mercantile Trust Company, any other concern may be included in this combination, or others substituted therefor, provided the working efficiency or values are not lessened or impaired.

4 That, if the amount of bonds subscribed and paid for upon such public issue shall be at least equal to the amount of bonds so offered to the public, then all liability under this agreement shall cease.

5 That, in case the amount of bonds subscribed for upon such public offering shall be less than the total amount of bonds so offered to the public, or in case the bonds subscribed for upon such public issue shall not be paid for

to an amount equal, at the rate of 95%, to the total of such public offering, then such deficiency in subscriptions and payments will, upon the demand of The Mercantile Trust Company, be made good by the subscribers hereto in the manner aforesaid *pro rata* in the proportion their subscriptions for bonds not withrdawn by them from public issue bear to the total amount of bonds so offered to the public.

6 That each underwriter shall receive in preferred and common stock of the United States Shipbuilding Company, twenty-five per cent. of the par value of the bonds hereby underwritten in each kind of stock, and also that all the proceeds, not to exceed 5%, realized from the sale of the bonds at public issue in excess of 90%, after deducting issue expenses, shall belong to the underwriters.

7 That any underwriter shall have the option of withdrawing from the public issue any of the bonds hereby underwritten by him, provided that he notify The Mercantile Trust Company five days prior to the dav fixed for the public issue, that he elects to purchase said bonds, provided that in the proportion of the bonds so purchased he waives his said right to participate in the cash proceeds realized from the public issue.

8 That no Underwriter shall sell or offer for sale the bonds so purchased, nor any of the bonus shares of stock he receives, until twelve months after the date of payment, without the consent of The Mercantile Trust Company.

NEW YORK, April 19, 1902.

I have seen a printed copy of this mortgage dated August 11, 1902, between the United States Shipbuilding Company and the Mercantile Trust Company. It was signed in behalf of the United States Shipbuilding Company and by Lewis Nixon, as Vice-President, attested by Frederick K. Seward, as Secretary; and in behalf of the Mercantile Trust Company by Alvin K. Krech, Vice-President, attested by J. D. Ostrander, Assistant Secretary, and acknowledged on the 11th day of August, 1902. In this mortgage the form of the bond is provided and declares that Series A to be issued under this mortgage shall not exceed $16,000,000.

There is a further provision that "this bond shall not become effective or obligatory for any purpose unless and until it shall have been authenticated by the certificate thereon endorsed by the said Trust Company."

The mortgage contained the provision that

ARTICLE I, SECTION 2.

"Bonds to the amount of Sixteen Million Dollars with all coupons for interest thereto attached shall forthwith be executed by the Shipbuilding Com-

pany and delivered to the Trustee for authentication. and the Trustee shall immediately and without awaiting the recording of this indenture authenticate and deliver the same upon the order of the President or Vice-President and Treasurer of the Shipbuilding Company."

and the further provision that

ARTICLE I, SECTION 4.

"The Shipbuilding Company covenants that it will not issue, exchange, sell or dispose of any bonds hereunder in any manner other than in accordance with the provisions of this indenture and the covenants and agreements in that behalf herein contained."

That the Mercantile Trust Company had any legal title to the bonds or had control of their possession or distribution by the Shipbuilding Company does not appear to be the fact.

The only apparent interest on the part of the Mercantile Trust Company was its compensation as Trustee, unless it be true, as has been asserted, that the Mercantile Trust Company was one of the underwriters, which subscription was subsequently, as I have been informed, personally assumed by Mr. Alvin W. Krech.

On June 24, 1902, John W. Young undertook to transfer and sell to the Shipbuilding Company the various shipbuilding and other properties mentioned, with a certain amount of cash, and his payment was to come from the issue of the $16,000,000 of first mortgage bonds, of which $1,500,000 were to remain in the treasury.

The Shipbuilding Company did not acquire title to the shipbuilding plants until the 11th of August, and up to that time no bonds were, apparently, deliverable by or on the behalf of the Shipbuilding Company, on any account whatever. Any issue of the bonds by the Shipbuilding Company prior to that time seems strange to the uninitiated.

On the 11th day of August, when the Bethlehem properties were to be turned over, the promoters of the Shipbuilding enterprise were facing a crisis. Under the contract for the sale of the Bethlehem property it was provided that the properties of the Shipbuilding Company should not only be acquired, but the title vested in the Shipbuilding Company; and this required the payment of $6,000,000, besides the possession of a cash working capital of $1,500,000.

The provisions of the agreement showing the caution exercised in behalf of Mr. Schwab, to assure the full compliance with these conditions and to assure the good faith of the transactions before the Bethlehem was turned over, are as follows:

"At the time of the said purchase of said shares of stock of the Bethlehem Steel Company by said Nixon and Dresser and the sale to said Schwab of the bonds, preferred stock and common stock to be issued by said Shipbuilding Company, as herein provided for, *said Shipbuilding Company shall have duly purchased and become possessed of the property and assets or the capital stock or both of said 'Subsidiary Companies.'*

"Said Nixon and Dresser shall furnish the certificates of Messrs. Alexander & Green, of Counsel for said Shipbuilding Company, and the other parties financially in interest in such form as shall be satisfactory to said Schwab, of the validity of the organization of the said Shipbuilding Company, of the acquisition by it of the properties, plants and assets or capital stock or both of said 'Subsidiary Companies' of the acquisition by it of said stock of the said Bethlehem Steel Company, of the issuance of full paid, non-assessable shares of preferred stock and common stock of the Shipbuilding Company to be delivered to said Schwab under this agreement, and of the validity thereof, and of the authorization and issue of the stocks and bonds of the Shipbuilding Company, together with satisfactory evidence of the consent and authority of all parties in interest, for the issue of the said stocks and bonds of said Shipbuilding Company, as herein provided for."

To summarize, it was insisted in behalf of Mr. Schwab that the Bethlehem Company should not come into the combination until the other properties had been acquired and paid for, the titles vested in the Shipbuilding Company and the considerations for the issuance of the various securities properly received.

The necessary certificate of Alexander & Green was furnished to both J. P. Morgan & Co. and Mr. Schwab, as is shown by the evidence taken before Mr. Oliphant, United States Commissioner, in the Shipbuilding hearing.

A cable to Young, in Paris, on August 8th, said:

"Under our contract to purchase Bethlehem, which must be consummated Monday, we have to have all other plants fully paid for and transferred to Shipbuilding Company first. This means all cash must be in hand Saturday, entirely irrespective of date of option. There is serious danger in Bethlehem matter as they will give no extension of time.

REPUBLICUS."

Bethlehem could not be acquired until all the cash requirements were in hand to acquire the plants and working capital.

It was determined to borrow the money on the Shipbuilding securities to take the place of the non-forthcoming funds of the French underwriters.

Dresser and Nixon got some loans, but they were unable to get enough, so Dresser arranged with different institutions for deposits of the Trust Company of the Republic's funds, and then they borrowed the amount of this money individually, placing with the loaning institutions double the amount borrowed in Shipbuildin bonds, giving their joint notes and the guaranty of the Trust Company of the Republic, signed by D. LeRoy Dresser, President.

Some of these loans were on the books of the Trust Company of the Republic, but all new loans were not at first put upon the books of the Trust Company of the Republic as an indebtedness of the Trust Company. Some were entered as contingent liabilities and some were carried as assets.

In one instance, five hundred thousand dollars were deposited in a trust company by Mr. Dresser as an interest-bearing deposit, a credit to the Trust Company of the Republic. Five hundred thousand dollars were borrowed from this same trust company by Mr. Dresser upon $1,000,000 of Shipbuilding bonds, accompanied by the joint note of Mr. Nixon and Mr. Dresser and a guaranty executed by Mr. Dresser in the name of the Trust Company of the Republic. All of this was done, according to the testimony, in the branch office of the Trust Company of the Republic at 71 William Street, New York City, and the minutes of the Trust Company of the Republic do not show that the transactions were at the time done with the knowledge of the Board of Directors.

The check of the other trust company, to the order of Nixon and Dresser, was deposited in the Trust Company of the Republic to the credit of the loans of Nixon and Dresser.

There certainly was a failure to observe proper banking methods.

The Knickerbocker Trust Company declined to loan on Dresser's and Nixon's notes supported by the collateral of the Shipbuilding bonds, and required additional collateral. It obtained an assignment in the following form:

KNOW ALL MEN BY THESE PRESENTS, that the MERCANTILE TRUST COMPANY, a corporation of New York, hereby releases to the UNITED STATES SHIPBUILDING COMPANY (a corporation of New Jersey), its successors or assigns, all the right, title and interest of said The Mercantile Trust Company in and to certain underwriting agreements relative to the First Mortgage Five Per Cent. Sinking Fund Gold Bonds of the said Shipbuilding Company, hereto annexed, and respectively executed by the following named Subscribers, for the amount of bonds set opposite their names, to wit:

C. W. Wetmore	$200,000
E. G. Bruckman	200,000
J. W. Gates	100,000
Alex. R. Peacock	100,000
Edwin Gould	100,000
George J. Gould	100,000
Dumont Clarke	25,000
Stuyvesant Fish	50,000
Richard Delafield	25,000
C. M. Schwab	500,000
Ex. Norton & Co	125,000
W. L. Stow	50,000
S. P. McConnell, &c	25,000

Dated August 11, 1902.

MERCANTILE TRUST COMPANY,
By A. W. KRECH,
Vice-President.

In the presence of
W. W. GREEN.

In connection with this loan there was executed the following:

The Trust Company of the Republic hereby certifies that, under the underwriting agreements relative to the first mortgage, five per cent. sinking fund gold bonds, Series A, of the United States Shipbuilding Company, of which several copies are hereto annexed, the entire amount of $9,000,000 were underwritten as provided in Clause (1) of said agreements.

Dated New York, August 11, 1902.

TRUST COMPANY OF THE REPUBLIC,
By JAMES DUANE LIVINGSTON,
Vice-President.

There was a second assignment by the Shipbuilding Company, also signed by James Duane Livingston, Second Vice-President of the United States Shipbuilding Company, to Lewis Nixon and D. LeRoy Dresser, which assignment was as follows:

THIS AGREEMENT, made this 11th day of August, 1902, between the UNITED STATES SHIPBUILDING COMPANY a corporation of New Jersey, hereinafter sometimes called the Shipbuilding Company , party of the first part, and LEWIS NIXON and D. LEROY DRESSER, party of the second part, WITNESSETH:

The SHIPBUILDING COMPANY, through its agent, the Mercantile Trust Company, entered into several agreements, called "Underwriting Agreements," relative to the sale of the First Mortgage Five Per Cent. Sinking Fund Gold Bonds of the Shipbuilding Company, including, among others, the agreements hereto annexed, signed by the below-mentioned subscribers, for the amount of bonds respectively set opposite their names:

C. W. Wetmore	$200,000
E. G. Bruckman	200,000
J. W. Gates	100,000
Alexander R. Peacock	100,000
Edwin Gould	100,000
George J. Gould	100,000
Dumont Clarke	25,000
Stuyvesant Fish	50,000
Richard Delafield	25,000
C. M. Schwab	500,000
(J. D. L.) Ex-Norton & Co	125,000
W. L. Stow & Co	50,000
S. P. McConnel	25,000

Upon each of the foregoing underwriting agreements, 50 per cent. of the amount subscribed has been called and paid, Lewis Nixon and D. LeRoy Dresser are about to borrow from Knickerbocker Trust Company the sum of seven hundred thousand dollars ($700,000) and to assign as collateral security therefor, the above described underwriting agreements to the extent of the unpaid liability of the subscribers thereon together with the First Mortgage Five Per Cent. Sinking Fund Gold Bonds of the Shipbuilding Company to the amount in par value of $1,600,000, and Preferred Stock of the Shipbuilding Company to the amount of 4,000 shares and Common Stock of the Shipbuilding Company to the amount of 4,000 shares.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH: That the Shipbuilding Company, in consideration of the promises and the sum of one dollar to it in hand paid, the receipt whereof is hereby acknowledged, assigns to Lewis Nixon and D. LeRoy Dresser, their assign or assigns, each and all the underwriting agreements above described, and hereto annexed, with all the right, title and interest therein of the Shipbuilding Company, with full power to said Lewis Nixon and D. LeRoy Dresser, their assign or assigns, in the name of the Shipbuilding Company, or otherwise, to enforce the said agreements, and each of them, to make calls thereon, or cause the same to be made, and to do any other act which the Shipbuilding Company might, could or should do to fully be entitled to the benefit and security of the said agreements.

IN WITNESS WHEREOF, the SHIPBUILDING COMPANY has caused this agreement to be executed in its name by its Second Vice-President, and its corporate seal to be hereto affixed and attested by its Secretary, this 11th day of August, 1902.

UNITED STATES SHIPBUILDING CO.,
By JAMES DUANE LIVINGSTON,
2d Vice-President.

[SEAL]

Attest.
FREDERICK SEWARD,
Secretary.

Upon this document was endorsed a further assignment in the following language:

"For value received we hereby assign, transfer and set over to the Knickerbocker Trust Company all our right, title and interest in and to the foregoing instrument, and in the underwriting agreements therein mentioned.

Dated August 11, 1902.

DANIEL LEROY DRESSER,
LEWIS NIXON.

In the presence of
BRAINARD TOLLES."

Mr. Dresser had reached the end of his own resources and had exhausted those of the Trust Company of the Republic. Both were in danger, and he knew it. The responsibility had been shifted upon his shoulders. No help seemed forthcoming from the originators of the undertaking and the promises of other promoters as to French financial returns were becoming shadowy. In this predicament he sought Mr. Schwab's counsel, Mr. Schwab being in Europe at the time. Mr. Pam took Mr. Dresser over to the office of J. P. Morgan & Co. and introduced him to Mr. Perkins.

Mr. Dresser requested a loan of $2,500,000, but Mr. Perkins said he could not make loans on Shipbuilding securities. Mr. Dresser said that he and his associates were expecting remittances in a week or ten days from the French underwriting and would need the assistance only that long. Mr. Perkins was told by Mr. Dresser that the proceeds of the French underwriting would not long be delayed. Mr. Dresser called again the next day and told Mr. Perkins that several financial institutions would be willing to assist them if they could have the additional funds, and again requested a loan.

Mr. Perkins was unwilling to make a loan, but he did finally say that he would deposit $2,100,000 in any three responsible Trust Companies Mr. Dresser might name for ten days or two weeks.

Mr. Dresser mentioned the Knickerbocker Trust Company, the Trust Company of the Republic and the Manhattan Trust Company.

The Manhattan Trust Company did not accept the deposit. The other two companies did receive $1,400,000, issued their certificates of deposit to J. P. Morgan & Co. and loaned this amount to Mr. Nixon and Mr. Dresser.

Mr. Perkins introduced Mr. Dresser to the New York Security and Trust Company, which made a loan to Dresser and Nixon of $350,000, making the total assistance secured in that way $1,750,000.

The $1,750,000 thus borrowed, while it was a great help, was not sufficient to place the promoters in a position to buy the properties for which they held options. They were still short of the necessary cash requirements. But the Trust Company of the Republic had more than $4,000,000 in deposits.

Methods similar to those described were taken with other institutions, until, in the joint names of Mr. Nixon and Mr. Dresser, secured by the guaranty of the Trust Company of the Republic issued by Mr. Dresser, and the Shipbuilding Company collateral some millions were raised sufficient to draw the checks to the vendors, which checks aggregated $6,000,000.

The Trust Company of the Republic had received from underwriters and subscribers $2,327,812.50, of which it had contributed $250,000 of its own money. It had lent directly to Mr. Nixon and Mr. Dresser, or supported their notes by its guaranties, $3,672,187.50.

Under these conditions the fateful day for paying for the properties arrived. The Trust Company of the Republic prepared twenty-four checks, aggregating $6,000,000, fifteen of which were made out to the order of Lewis Nixon, and through the latter, as holder of the options under Young's power of attorney, it is said the checks were delivered to the owners of the constituent companies. Besides this cash the vendors, of whom Mr. Nixon was one, were supposed to receive $4,050,000 in bonds and $4,000,000 in each kind of stock.

The great Shipbuilding Company was now an accomplished

fact with the exception of taking over the Bethlehem; but the structure was built upon a dangerous foundation, likely to give way at any time. The weaknesses were the extravagant values placed upon the shipyards and the French underwriting.

The Bethlehem transfer, which was performed on August 12th, though of vast importance, was very simple. Mr. Nixon and Mr. Dresser met the various parties in interest in the office of J. P. Morgan & Co., and there received the stock of the Bethlehem Steel Company, paying for it with Mr. Schwab's check for $7,246,871.48, and passing over $10,000,000 collateral mortgage bonds, $10,000,000 of preferred stock and $10,000,000 of common stock, of which $2,500,000 of each kind of stock was delivered to J. P. Morgan & Co. as syndicate managers. It remained only for the new holders of the Bethlehem stock to deposit it with the New York Security and Trust Company as security for the collateral mortgage. This they did without delay.

It is not my intention to follow the fortunes of the United States Shipbuilding Company to their conclusion. It is clear, however, from the disclosure of the facts, that, with the exception of the Bethlehem Steel Company, the Union Works and the Hyde Windlass Company, the constituent companies were indebted far beyond their ability to pay, and the new trust was without the earning capacity to meet the heavy fixed charges fastened upon it by the promoters' issue of $16,000,000 of bonds. The subsequent failure and fall of the company was inevitable, no matter who was in charge of its affairs or how efficient its management.

Mr. Schwab and Mr. Pam have been repeatedly charged with wrecking the United States Shipbuilding Company. I have devoted many weeks to the examination of the evidence, documents and facts in connection with the entire matter, and have thoroughly informed myself from all available sources of information with reference thereto. From the evidence at hand it appears that neither Mr. Schwab nor Mr. Pam had any connection with promoting, organizing or financing the Shipbuilding enterprise nor with the various transactions in connection therewith. Whether the criticism of Mr. Schwab, in securing for himself so large a consideration for the Bethlehem Steel Company stock is justified (considering that he is the only one who received no cash for his

property, having received his entire pay in securities) is not for me to say. Nor is it within my province to comment on the criticism and complaint made against his counsel, Mr. Pam, for his faithfulness in protecting his client's interests in the preparation of the contract and mortgage. It was Mr. Pam's effort to safeguard and protect his client's interests against any unforeseen contingencies. Whatever may be the facts pertaining to the safeguarding of Mr. Schwab's interests, the conclusion is inevitable that it was not to this, but rather to the financial transactions which occurred prior to his contract with the Shipbuilding Company that its downfall must be traced.

While I shall not follow the United States Shipbuilding Company any further, having told now in outline the story of how it was established, it is well to continue with the Trust Company of the Republic until the final effect of its operations has been shown. The parties in interest must have fairly groaned with relief when the properties were paid for, although the methods by which they accomplished this reminds one rather of the shiftless Micawber than of any other person or thing in fiction or in history.

It must also be borne in mind that this transaction was all completed in a short space of time and during the months of July and August of the summer of 1902, when there were few if any meetings of the Board of Directors of the Trust Company of the Republic. The transactions were not entered upon the minute-book of either the Executive Committee or the Board of Directors.

The troubles of the unfortunate Trust Company of the Republic were just beginning. The French underwriting produced not a dollar. Dresser's ambition to organize a gigantic trust had been satisfied, but in the process the capital, surplus and deposits of the Trust Company of the Republic had been nearly wiped out and it was in an exceedingly precarious position. Only immense success on the part of the creature it had made could save it from the fate of Frankenstein. It had gambled on the result of the French underwriting and had lost. Although the great Shipbuilding Company had been launched and the required $1,500,000 of working capital had been credited to the United States Shipbuilding Company on the books of the Trust Company of the Republic as of August 12th, the funds therefor were lacking to meet its drafts. It became

necessary to provide that amount. Armed with guaranties signed by Dresser in the name of the Trust Company of the Republic and a vast amount of Shipbuilding securities, Mr. Nixon and Mr. Dresser borrowed, on August 30 and September 4 and 5, 1902, $1,500,000 from New York banks on their notes, secured in what had now become the usual manner.

The returns from the American underwriters and subscribers were applied to the reduction of the obligations of Mr. Nixon and Mr. Dresser. They brought the total in which they were indebted to the Trust Company of the Republic down to $3,279,909, to repay which they had nothing more substantial in sight than the French underwriting. This amount was afterwards reduced to $982,334.10.

At this point the bank examiner visited the Trust Company of the Republic. Its difficulties were not a matter of general knowledge, and it was esteemed a most prosperous institution. Its warehouse business in the South was growing at a phenomenal rate, the newspapers were filled with tales of its progress and its brilliant prospects in an almost virgin field. But when the State Bank Examiner finished his inspection the world was informed of the almost inextricable tangle it had got into through its connection with the Shipbuilding Trust, and its stock dropped to below par.

At this critical juncture a syndicate, which became known as the Sheldon Syndicate, was formed to take over the financial obligations of the Trust Company of the Republic, accepting in payment therefor securities of the Shipbuilding Trust. The Syndicate did take over these obligations and thus relieve in part the situation. Even then, had the Shipbuilding Company been established upon a sound basis, or had it even acquired properties which, exclusive of the Bethlehem, and the two others mentioned, were sound and self-supporting, the Trust Company of the Republic would have won its way clear financially. But since the Shipbuilding Company was itself insolvent and a failure, it was not possible for the Trust Company of the Republic to realize on the securities which it held of the combination and thus replace the large amount in which it was involved. Its reputation, too, had been sacrificed. It was reorganized under a new name and is to-day only a memory, and its history only a contention in the courts.

It is not to be assumed that I have covered the whole question of the relation of the trust company to the industrial combination; nor even the whole question as to the relation of these two trust companies to the Shipbuilding Corporation. On the contrary, I have carefully avoided discussion of certain topics which may be the subject of litigation, and I have touched only so far as was necessary to fill out the lines of my view of the situation upon matters pertaining thereto which are in doubt and which may be the subject of litigation.

The tendency of financial institutions—known in our State as "moneyed corporations"—is to affiliate too closely with industrial propositions, the ultimate outcome of which cannot be adequately determined from the showings made by promoters and others interested in their flotation.

There is a side of the picture which is less unpleasant than the side which I have turned to you. It is that the lesson which has been taught by the organization of the Shipbuilding Company had a wholesome effect upon Wall Street and other financial institutions. It is, too, that because the present Superintendent of Banks in the State of New York ably supervised the adjustment of the intricate details, so far as his jurisdiction was concerned, no financial panic resulted from a disclosure of the condition into which the Trust Company of the Republic had been led by its President.

I have no time to draw a parallel, but I think that those who are familiar with the history of similar undertakings in England and Scotland will admit that they show a more dangerous affiliation in those countries between financial institutions and industrial promotions. Across the water many men in high financial position acted as directors of flotations which were similar to this one, but which had really a less stable foundation. Many financial institutions not only fathered industrial propositions which failed to turn out as expected, but they endorsed them. The result was that in England, after a collapse, financial institution after financial institution closed its doors and a panic resulted.

From the standpoint of a single individual I believe that I have portrayed the final example of an undertaking of the kind which I have been describing. To-day, as a consequence of the

lesson which has been learned by the false establishment of the United States Shipbuilding Company, our financial leaders and our financial institutions are gradually withdrawing from affiliations with industrial combinations, and each one is assuming its true position.

The reader will agree with me that the institution and the industrial combination are of value, each in its place, but a close partnership between the two is dangerous, inasmuch as the financial institution and the industrial combination must necessarily stand upon a different footing in their relations to the public. The *salve* in the situation is that the general public did not become a participator in the flotation of which I have been speaking, and did not invest largely in the securities of the Shipbuilding Company.

The result has been unfortunate for those who did become investors, but the heaviest loss fell upon men who were in a financial position to stand it: namely, the underwriters, who entered for profit and who expected large returns with but little responsibility.

Even as concerns the Trust Company of the Republic it is a subject for congratulation that by the wiser subsequent management which undertook its reorganization, its financial credit has been sustained and as a consequence of the assistance rendered by the men who formed the "Sheldon Syndicate," who can well afford the loss, it is in a position to continue business as an institution of integrity.

Appendix

REPORT OF THE ANNUAL MEETING COMMITTEE.

EIGHTH ANNUAL MEETING

OF THE

American Academy of Political and Social Science

Philadelphia, April 8 and 9, 1904.

In choosing "The Government in its Relation to Industry" as the general topic of the Eighth Annual Meeting your Committee was desirous of focusing the attention of the members of the Academy upon certain of those questions of government regulation now in the forefront of public discussion. To this end the relations of our governments to banking and trust companies, to the expansion of foreign trade, to the restriction of immigration, and to the control of large industrial and commercial corporations or trusts were chosen as the subjects of the four sessions of the Annual Meeting. Your Committee desires to express its appreciation of the courtesies extended to members and visitors at the Annual Meeting by the Provost of the University of Pennsylvania, the officers of the Manufacturers' Club, the Union League, and the Philadelphia Commercial Museums. As in former years, the expenses of the meeting have been defrayed principally from a special fund contributed by friends of the Academy. The generous support received from these sources has enabled the officers of the Academy to enlarge the scope of the meeting and to give to the printed Proceedings a correspondingly broader circulation. The thanks of the members of the Academy is due to these friends of the organization who have made possible the extension of its public usefulness.

SESSION OF FRIDAY AFTERNOON, APRIL 8TH.

The Presiding Officer, Honorable Frank A. Vanderlip, of New York City, introduced Joseph Wharton, Sc. D., Chairman of the Local Reception Committee. In welcoming the members and visitors to the annual meeting Mr. Wharton spoke as follows:

Mr. Chairman, Members and Guests of the Academy of Political and Social Science.

As the years pass by it becomes more and more evident that not only is there room in the United States for such an institution as this Academy, but that in fact the information and the ideals which it can disseminate are urgently needed by the people of this nation. The world is growing to appreciate more and more the predominating part which national and personal economy play in the great events which constitute the history of a race or nation.

When our minds are withdrawn from the contemplation of some hero or statesman who seems to have molded the community in which he dwelt, we often find that he was little more than the figure-head, or mouthpiece, of the great mass of undistinguished persons who had reached upon one or more points, convictions so clear and urgent that they were ready to take shape as irresistible forces, so soon as a competent leader arose to make them effective.

It is obvious, for instance, that commercial independence and industrial independence were more the underlying aims of our American Revolution than the mere political severing of the ties binding this country to the British throne.

Every reader of American history very well knows that resistance to taxation without representation, of which the Stamp Act was a conspicuous feature, the Non-Importation Resolutions of American merchants, the destruction of tea in Boston Harbor and the sending back of cargoes of tea from this port and New York were important factors leading to the Declaration of Independence, yet we are rather too much inclined to let our attention be drawn away from these underlying causes by our interest in the actual combat, and our admiration for the brilliant characters of the great men who became the nation's leaders.

Another instance of great historic changes resulting from somewhat obscure causes is the revolt of the peoples of Northern Europe

from the domination of the Roman Catholic Church, which was also due in a large measure to economic causes; namely, the exactions of the Roman hierarchy in draining money from those countries for its support and for its enterprises; among them the building of the great Cathedral of St. Peter in Rome. We have heard in a general way of the begging friars who went up and down through Europe taking toll from the inhabitants, and we have heard of the sale of indulgences by the monk Tetzel and others, but these things have perhaps never been so clearly set forth as factors in the Reformation as in the recent statement by our distinguished fellow citizen, Mr. Henry C. Lea, in his contribution to "The Cambridge Modern History," edited by Lord Acton, in which he describes the condition of Europe before the Reformation, and the causes leading to that Reformation. Mr. Lea emphasizes the important, if not the principal, part which these money exactions played toward bringing men's minds to the point of declaring their independence from the domination of Rome; a matter evidently quite apart from any question of religion.

After giving all allowance to the brave spirit of Martin Luther, it cannot be denied that he entered upon a field already ripe unto the harvest, so that his great work was practicable as otherwise it could not have been.

When an earthquake carries destruction over a great territory, destroying many lives and changing the face of nature, that disruption and that overturning do not result from some cause born at the moment, but the shock is the result of causes which have been quietly operating for years, centuries, or for long ages; such as the contraction of the earth's crust by loss of heat, or the shifting of enormous masses of earth from the various affluents of a great river to the delta at its mouth—either of these causes producing new strains gradually increasing to the point of rupture.

This Academy naturally turns a part of its attention to such enduring and unobtrusive social forces.

Another proper subject for the consideration of the Academy is, I think, the enormous waste and destruction of the several funds provided by nature as for the special use of man, such as the timber forests of a country, its supplies of coal, mineral oil, or iron ore and similar resources. The waste of forests might seem not fairly com-

parable to the waste of minerals which do not grow and when exhausted can never be replaced, but, although other trees may grow to replace those which are destroyed, new forests do not, in fact, appear except in a very moderate degree. Destruction not merely consumes the fund of utility possessed by the timber itself, but by altering climatic conditions makes unproductive and almost uninhabitable great regions which originally were well watered and fertile.

Our forests have been most wastefully destroyed and are still so being destroyed. In our Southern Atlantic States, for instance, vast regions of pine forest are now being denuded, principally for the comparatively small fund of turpentine which they can be made to yield, but partly to clear up the ground for cultivation, which latter is largely shiftless and destructive to the elements of fertility which the soil contains. The timber in these cases is wasted by burning, because it is just now too far from easy transportation to compete with that which lies a little nearer.

The exhaustion of coal and iron ores now going on in Great Britain, giving to that country a temporary power to draw wealth from those lands to which its manufactures are exported, is an instance of another sort of waste, which must result before long in the distinct lowering of Great Britain's place among the nations. Hasty legislation cannot be expected to prevent waste of our own enormous natural resources, but a wholesome public sentiment must be created which will lead to abhorrence of the waste and ultimately to such prudent legislation as may diminish it. I shall not attempt to indicate all the various lines of action or education in which this Academy may be useful, but shall conclude by offering to those members and guests of the Academy, who do us the honor to come here from their various homes, a cordial welcome to Philadelphia. We hope that they may find their stay here both profitable and pleasant.

The Presiding Officer announced as the general topic of the afternoon session, "Government Regulation of Banks and Trust Companies." The first address, on "Government Control of Banks and Trust Companies," was delivered by Honorable William Barret Ridgely, Comptroller of the Currency, Washington, D. C. Mr. Ridgely's address will be found on pages 15–26.

The second address on, "Control and Supervision of Trust

Companies," by Honorable Frederick D. Kilburn, State Superintendent of Banks, Albany, N. Y., will be found on pages 27–42.

The fourth address, on "Financial Reports of the National Banks as a Means of Public Control," by Professor Frederick A. Cleveland, New York University, will be found on pages 43–66.

SESSION OF FRIDAY EVENING, APRIL 8TH.

The session of Friday evening, April 8th, was presided over by Dr. Charles Custis Harrison, Provost of the University of Pennsylvania. Dr. Harrison introduced the President of the Academy, Professor L. S. Rowe, of the University of Pennsylvania, who presented a review of the work for the year 1903–04.

Dr. Rowe spoke as follows:

This year marks the fifteenth anniversary of the founding of the Academy—a period presenting an unbroken record of activity and broadening influence. Through the combined efforts of our members in all sections of the country, the Academy has acquired an educational influence, national in scope, and contributing in no small measure towards the development of an enlightened public opinion.

At no time in our history has the country stood in greater need of such educational agencies. With each year industrial, social and political problems are becoming more complex and with this increasing complexity the dangers involved in attempts at hasty and ill-advised solutions are increased. Throughout the long period of heated and, at times, acrimonious discussion that has marked the development of American public policy during the last fifteen years, the Academy has held itself free from all entanglements and has constantly labored for the frankest discussion at its meetings and for the fullest presentation of facts in its publications. During the year that has elapsed since our last annual meeting, we have published six special volumes covering the following subjects:

1903, May—Problems in Charities and Correction.
" July—The United States and Latin America.
" September—Southern Educational Problems.
" November—Business Management.
1904, January—Tariff Problems—British and American.
" March—Municipal Problems.

NOTE.—The third address on "The Relation of Trust Companies to Industrial Combinations, as Illustrated by the United States Shipbuilding Company," was delivered by L. Walter Sammis, Esq., Associate Editor, New York *Sun*. This address will be found on pp. 239-268.

Each of these volumes contains a well co-ordinated mass of scientific material on one of the great problems confronting the American people. By means of these publications the members of the Academy have been able to secure trustworthy information on questions affecting the vital interests of the country and have thus been in a better position to perform their duties as citizens.

The influence of these publications has not been confined to our members. The public press has made liberal use of the material gathered under the auspices of the Academy and has assisted in broadening the influence of our publication work. We, of the East, do not fully appreciate the position which the Academy has assumed in the Far West. A considerable number of clubs and reading centers depend upon the publications of the Academy for the material with which to conduct their inquiries and discussions. This phase of our educational work has been growing so rapidly that the time is now ripe for the creation of a special bureau of research and information, which will not only furnish guidance for special investigations, but will also bring members into closer touch with one another. One of the greatest services which the Academy can perform will be to co-ordinate the effort that is being put forth by our members in the study of industrial and political questions. With every section of the country fully represented in our membership, the Academy is in a position clearly to mirror the intelligent opinion of the American people as well as to present the results of the most advanced research.

In spite of this increasing influence, the Academy has hardly begun to utilize its possibilities of usefulness. In a great democracy such as ours a national organization which will maintain the highest ideals of truth and sincerity possesses unlimited possibilities for good. To realize these possibilities, however, each member must feel a keen sense of the responsibilities involved and a willingness to co-operate with his fellow members in developing the work and extending the influence of the Academy. The plea that I wish to make this year is for the further development of this spirit of co-operation. With it the Academy's educational influence will advance from year to year until every section of the country will profit by the research and investigation conducted under your auspices.

The Presiding Officer, Dr. Charles Custis Harrison, then intro-

duced the speaker of the evening, Honorable George Bruce Cortelyou, Secretary of the Department of Commerce and Labor, Washington, D. C.

Dr. Harrison spoke as follows:

"The growth of the United States of America is much more striking to all of us than is the development of the machinery of Government. In fact, the slow processes under which new Departments have been created to meet new needs are curious in the extreme."

After stating the rise and history of the several Departments of the Government, Provost Harrison concluded as follows:

"For many years duties have been assigned to these several Administrative or Executive Departments which have been wholly incongruous and unrelated to their proper functions; and for many years, too, as we all know, the development of the manufacturing interests of the country, and the mining interests of the country, has been so great as to force upon the attention of Congress the establishment of a Department in recognition of our national development upon these lines; and so, in 1902, the Department of Commerce —or, as it is now called, the Department of Commerce and Labor— was established. No one who has not read the Act can at all understand the multiform and multitudinous duties which devolve upon the Chief of this Department. When Oliver Wendell Holmes was a Professor at Harvard, he had so many subjects to teach that he called his Chair at Harvard a 'Settee!' And I think that Mr. Cortelyou may call his Chair in the Cabinet a Settee!

"Of course, all of us feel a peculiar interest in Mr. Cortelyou, entirely apart from the duties of his new and high office—an interest which has grown out of his affection for and intimacy with our late and much beloved President, William McKinley; for Mr. Cortelyou bore very much the same relation to Mr. McKinley as Mr. Nicolay and Mr. Hay bore to Mr. Lincoln, and it is an episode not to be overlooked that these two men, holding very much the same relations to two of our great Presidents, should find themselves together in the present Cabinet.

"We do not intend, to-night, to trouble Mr. Cortelyou with telling us of all the duties of his office. He can leave the Settee and take the 'Chair of Commerce,' and we shall be glad to hear from him

upon the subject upon which he has consented to speak to us—that is to say, of 'Some Agencies by which the Domestic and Foreign Trade of the United States may be Increased.'

"Ladies and gentlemen, I have very great pleasure in presenting to you the Honorable George B. Cortelyou, a member of the Cabinet, and Secretary of Commerce and Labor."

Secretary Cortelyou then delivered the annual address on "Some Agencies for the Extension of our Domestic and Foreign Trade." This address is printed on pages 1–12 of this volume.

At the close of Mr. Cortelyou's address the President of the Academy said:

"Before the adjournment of this meeting I wish to express to the Secretary of Commerce and Labor the sincere appreciation of the Academy for his admirable address. Called to one of the highest positions in the administration of our National Government, he has shown a breadth of view combined with an executive capacity which has aroused the admiration and inspired the confidence of the business community throughout the United States. It will be the privilege of the historian a hundred years hence fully to describe the difficulties that had to be overcome in the establishment of this great new Department and to gauge at their true value the courage and tact that were required to assure to this Department its full measure of usefulness. We stand so close to the formative period of this Department that we cannot appreciate in all its bearings the great edifice which is being reared by the Secretary of Commerce and Labor. But the results already accomplished are sufficient to enable us, in welcoming the speaker of the evening, to pay tribute to the zeal, energy, faithfulness, devotion and the ability with which the new work has been undertaken."

SESSION OF SATURDAY AFTERNOON, APRIL 9TH.

The Presiding Officer, Honorable Samuel McCune Lindsay, Commissioner of Education, Porto Rico, announced as the general topic of the afternoon session, "The Immigration Problem," and introduced the first speaker, Honorable Frank Pierce Sargent, Commissioner-General of Immigration, Washington, D. C. The address of Commissioner Sargent, on "Problems of Immigration," will be found on pages 151–158.

The second address on "The Problem of Assimilation," was delivered by Franklin H. Giddings, LL. D., Professor of Sociology, Columbia University, New York City. A summary of Professor Giddings' remarks follows:

In popular discussions of the effects of immigration upon the characteristics of the American people the word assimilation is used for two distinct but related phenomena: one, a gradual conversion of the mind and conduct of the immigrant to American standards, an approximation to an American type; the other an admixture through intermarriage of the immigrant blood with that of the native-born population. The commingling of bloods is the process of amalgamation. The modification of mind and conduct through initiation and education is the process of assimilation. In the present paper I shall examine the known facts relating to both assimilation and amalgamation as they are taking place in the United States to-day.

There never has been a time since immigration to the United States began on a large scale in 1820 when it has not been opposed by an influential class or party of the native born, which has tried to secure the enactment of restrictive legislation. This effort assumed formidable proportions in the Know-nothing movement of 1854. It barred out Chinese laborers in 1892, and now it is attempting to restrict the incoming of the peoples of Southern and Eastern Europe, admittedly more unlike the older American stock than were the Irish and German immigrants of former years. How far a restrictive policy is expedient can be determined only by a study of assimilation and of amalgamation, as these processes are statistically known, in the light of the past experience of the human race, which from the earliest times has been undergoing continual modification through the meeting of minds and the commingling of bloods.

These statistical facts and the lessons of history are plain to those who will read them without prejudice. Twenty-one millions of foreign-born persons have come to the United States since 1820, and yet to-day on the mainland of the United States only 1,403,212 persons are unable to speak the English language. Within the same area there are only 3,200,746 whites unable to read or write and of these 1,913,611 are native born. Few sober-minded

students would venture to affirm that American standards of living, or American legal and political institutions have as yet undergone any considerable change for better or for worse in consequence of the presence here of the immigration that arrived before the year 1890. Assimilation has been astonishingly complete, and the pessimistic predictions of the Know-nothings have not been verified.

Amalgamation proceeds slowly, and statistics of the intermarriages of native and foreign born, or of different nationalities of the foreign born, do not adequately represent it. We have no way of knowing how rapidly it proceeds among the children and grandchildren of immigrants when all distinctions of European nationality have been lost. The only question we can raise is: When admixture of the stocks now resident here has been accomplished what will the resulting population be like? This question can be answered with a high degree of certainty. In the entire United States 53 per cent. of the foreign born are of English and Teutonic stocks and 21 per cent. are of Celtic stocks. Practically 75 per cent. of our foreign born are of English, Teutonic and Celtic stocks. This is the fact that is made significant by history. The English people, and its offspring, the American people of English descent, are a product of the blending of Teutonic with Celtic bloods during the first ten centuries of the Christian era. Unless the inflow of Latin and Slavic peoples into the United States from this time forth should be out of all proportion to any phenomenon of immigration yet seen in the world's history, the American people must remain what it has thus far been, essentially English in blood, mental qualities, character and institutions.

Admitting that many of our immigrants now are physically and mentally inferior, our practical problem is to exclude undesirable persons without barring any nationality as such. This conclusion applies only to immigration of the white race. Dilution of the American blood by other color races, as for example, the Chinese, is highly undesirable, and should not be contemplated.

The third address, on "Immigration in its Relation to Pauperism," by Miss Kate Holladay Claghorn, of the Tenement House Department, New York City, will be found on pages 185–205.

"The Diffusion of Immigration" was discussed by Eliot Norton,

Esq., of New York City. Mr. Norton's address is published on pages 159–165.

Miss Anna Freeman Davies and Mr. Frank Julian Warne, of Philadelphia, then took up the discussion of the general problem from the standpoint of social work and of the racial problems involved.

SESSION OF SATURDAY EVENING, APRIL 9TH.

The Presiding Officer, Joseph G. Rosengarten, Esq., of Philadelphia, announced as the general topic of the session, "The Scope and Limits of Federal Anti-Trust Legislation." In opening the session Mr. Rosengarten spoke as follows:

"The Academy is fortunate in having as its guests this evening three gentlemen who have played an important part both in the development of corporate enterprise and in the solution of the corporate problems of recent years. Mr. James B. Dill, by reason of his familiarity with and active participation in the formation of many large and important corporate undertakings, is particularly well equipped to express views on Government regulation from the standpoint of the corporation itself. Mr. Charlton T. Lewis, through his long and varied practice in corporation law and from the many social and public-spirited organizations with which he has been connected, is also peculiarly fitted to discuss this question from the standpoint of the corporation and the public at large; while the first speaker of the evening, the Honorable James M. Beck, former Assistant Attorney-General of the United States, has been actively instrumental in determining the legal relations of the National Government with large commercial companies, and in the execution of the anti-trust laws of the United States. Mr. Beck needs no introduction to a Philadelphia audience, as he has for years been, and we shall always consider him to be, a Philadelphian. To each and all of them I can promise your careful attention, and to you the instruction that always follows a close logical discussion by experts able, earnest and *capax rerum*."

Honorable James M. Beck, Assistant Attorney-General of the United States, 1902–1903, delivered the first address, on "The Federal Power over Trusts," which will be found on pages 87–110.

James B. Dill, Esq., of New York City, discussed Mr. Beck's paper, pointing out the negative and conflicting character of the present legislation.[1]

An address on "The Scope and Limits of Congressional Legislation Against the Trusts," by Charlton T. Lewis, LL.D., then followed. Mr. Lewis' address will be found on pages 111–122.

[1] The Editors regret that, by reason of the serious and protracted illness of a member of Mr. Dill's family, he has been prevented from preparing his address for publication.